

IN THE SUPREME COURT OF THE  
STATE OF ALABAMA

PETITION TO AMEND THE ALABAMA RULES  
OF PROFESSIONAL CONDUCT

Comes now the Board of Bar Commissioners of the Alabama State Bar by and through the Office of General, and petitions this Honorable Court to adopt the proposed lawyer advertising rules as submitted herewith, and attached hereto as Appendix "A".

The Office of General Counsel would further submit that the attached proposed rules, for the most part, are the same as those previously submitted to this Court on December 11, 2001. Upon suggestion of the Court, the Bar resubmits these proposed lawyer advertising rules to this Court for consideration, and possible adoption.

Additionally, also attached hereto as Appendix "A-1", are the written comments of Bar Commissioner Tom Ryan, of Huntsville. Following submission of the proposed advertising rules in 2001, this Honorable Court

published the proposed rules changes for public comment. Commissioner Ryan voiced his opposition and concern about those rules at that time, for the most part, consistent with the attached Appendix "A-1".

WHEREFORE, the Alabama State Bar would request that this Honorable Court consider the proposed changes to the rules governing lawyer advertising in Alabama, and adopt same as attached hereto as Appendix "A".

Respectfully submitted on this \_\_\_\_\_ day of October, 2007.

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**Report of the Advertising Subcommittee,  
Committee on Disciplinary Rules and Enforcement**

**January 25, 2007**

The Advertising Subcommittee has considered the proposed changes to Rule 7.1 through 7.8 and makes these recommendations:

**Rule 7.1 [2] -- Communications Concerning a Lawyer's Services:** The Subcommittee recommends accepting the rule as proposed.

**Rule 7.2 [6] -- Advertising:** The Subcommittee recommends accepting the rule, with these changes --

¶(f) [7] -- in the last line, the reference to "paragraph (n)" should be changed to "paragraph (n)(1)-(3)."

¶(n) [10] -- the order of the subparagraphs should be changed so that

- (1) remains (1);
- (2) becomes (4);
- (3) becomes (5);
- (4) becomes (6);
- (5) becomes (7);
- (6) becomes (8);
- (7) becomes (9);
- (8) becomes (10);
- (9) becomes (11);
- (10) becomes (2);
- (11) becomes (3); and
- (1) remains (12).

¶(o) [11] -- the phrase "or on-screen text" should be changed to "and/or on-screen text."

**Rule 7.3 [17] -- Direct Contact with Prospective Clients:** The Subcommittee recommends accepting the rule, with these changes --

¶(a) [17] -- the definition of "solicit" should be changed from "contact in person, by telephone, telegraph, or facsimile transmission" to contact in person, by telephone, telegraph, facsimile transmission, email, or other electronic means."

¶(c) [20] -- in subparagraph (10), the sentence "Every written communication by a lawyer referral service shall be accompanied by a written statement detailing the background, training, and experience of each lawyer to whom the recipient may be referred." Should be replaced with a sentence that says "Every written communication disseminated by a lawyer referral service shall include a statement advising the prospective client that a written statement detailing the background, training, and experience of the lawyer to whom the client is referred is available, upon request, from the lawyer."

**Rule 7.4 [24] -- Computer - Accessed Communications:** The Subcommittee recommends accepting the rule as proposed.

**Rule 7.5 [26] -- Information About a Lawyer's Services Provided Upon request:** The Subcommittee recommends accepting the rule as proposed.

**Rule 7.6 [27] -- Communications of Fields of Practice:** The Subcommittee recommends accepting the rule as proposed.

**Rule 7.7 [28] -- Firm Names and Letterhead:** The Subcommittee recommends accepting the rule as proposed.

**Rule 7.8 [30] -- Professional Cards of Nonlawyers:** The Subcommittee recommends accepting the rule as proposed.

Dorman Walker  
Chair, Advertising Subcommittee

**INFORMATION ABOUT LEGAL SERVICES**

**RULE 7.1 COMMUNICATIONS CONCERNING  
A LAWYER'S SERVICES**

**(a)** Prohibited Communications about Legal Services. A lawyer shall not make or cause to be made a false or misleading communication about the lawyer or the lawyer's services. A communication is false or misleading if it:

(1) contains a material misrepresentation of fact or law, or omits a fact necessary to make the statement considered as a whole not materially misleading;

(2) contains any reference to past successes or results obtained or is otherwise likely to create an unjustified expectation about results the lawyer can achieve except as allowed in the rule regulating information about a lawyer's services provided upon request;

(3) ~~or~~ states or implies that the lawyer can achieve results by means that violate the Rules of Professional Conduct or other law;

~~(3)~~(4) compares the quality of the lawyer's services with the quality of other lawyers' services, except as provided in ~~Rule 7.4~~ Rules 7.5 or 7.6; ~~or~~

~~(4)~~ (5) communicateds the certification of the lawyer by a certifying organization, except as provided in Rule 7.6; or

(6) contains a testimonial.

**(b)** Misleading or Deceptive Factual Statements. Any factual statement contained in any advertisement or written communication or any information furnished to a prospective client under this Rule shall not:

(1) be directly or impliedly false or misleading;

(2) be potentially false or misleading;

(3) fail to disclose material information necessary to prevent the information supplied from being actually or potentially false or misleading;

(4) be unsubstantiated in fact; or

(5) be unfair or deceptive.

(c) Descriptive Statements. A lawyer shall not make statements describing or characterizing the quality of the lawyer's services in advertisements and written communications; provided that this provision shall not apply to information furnished to a prospective client at that person's request or to information supplied to existing clients.

(d) Prohibited Visual and Verbal Portrayals. Visual or verbal descriptions, depictions, or portrayals of persons, things, or events must be objectively relevant to the selection of an attorney and shall not be deceptive, misleading, or manipulative.

(e) Advertising Areas of Practice. A lawyer or law firm shall not advertise for legal employment in an area of practice in which the advertising lawyer or law firm does not currently practice law.

#### **Comment**

This Rule governs all communications about a lawyer's services, including advertising permitted by 7.2. Whatever means are used to make known a lawyer's services, statements about them should be truthful. ~~The prohibition in paragraph (b) of statements that may create "unjustified expectations" would ordinarily preclude advertisements about results obtained on behalf of a client, such as the amount of a damage award or the lawyer's record in obtaining favorable verdicts, and advertisements containing client endorsements. Such information may create the unjustified expectation that similar results can be obtained for others without reference to the specific factual and legal circumstances.—~~ This precludes any material misrepresentation or misleading omission, such as where a lawyer states or implies certification or recognition as a specialist other than in accordance with this Rule, where a lawyer implies that any court, tribunal, or other public body or official can be

improperly influenced, or where a lawyer advertises a particular fee or a contingency fee without disclosing whether the client will also be liable for costs. Another example of a misleading omission is an advertisement for a law firm that states that all the firm's lawyers are juris doctors but does not disclose that a juris doctorate is a law degree rather than a medical degree of some sort and that virtually any law firm in the United States can make the same claim. Although this Rule permits lawyers to list the jurisdictions and courts to which they are admitted, it also would be misleading for a lawyer who does not list other jurisdictions or courts to state that the lawyer is a member of the Alabama Bar, standing by itself, that otherwise truthful statement implies falsely that the lawyer possesses a qualification not common to virtually all lawyers practicing in Alabama. The latter 2 examples of misleading omissions also are examples of unfair advertising.

## Prohibited information

The prohibition in subdivision (a)(2) of statements that may create "unjustified expectations" precludes advertisements about results obtained on behalf of a client, such as the amount of a damage award or the lawyer's record in obtaining favorable verdicts, and advertisements containing client endorsements or testimonials. Such information may create the unjustified expectation that similar results can be obtained for others without reference to the specific factual and legal circumstances.

The prohibition in paragraph (a)(4) of comparisons of lawyers' services would preclude a lawyer from representing that the lawyer or the lawyer's law firm is "the best," "one of the best," or "one of the most experienced" in a field of law.

The prohibition in paragraph (a)(6) precludes endorsements or testimonials, whether from clients or anyone else, because they are inherently misleading to a person untrained in the law. Potential clients are likely to infer from the testimonial that the lawyer will reach similar results in future cases. Because the lawyer cannot directly make this assertion, the lawyer is not permitted to indirectly make that assertion through the use of testimonials.

Paragraph (d) prohibits visual or verbal descriptions, depictions, or portrayals in any advertisement which create suspense, or contain exaggerations or appeals to the emotions, call for legal services, or create consumer problems through characterization and dialogue ending with the lawyer solving the problem. Illustrations permitted under *Zauderer v. Office of Disciplinary Counsel of the Supreme Court of Ohio*, 471 U.S. 626 (1985), are informational and not misleading, and are therefore permissible. As an example, a drawing of a fist, to suggest the lawyer's ability to achieve results, would be barred. Examples of permissible illustrations would include a graphic rendering of the scales of justice to indicate that the advertising attorney practices law, a picture of the lawyer, or a map of the office location.

## RULE 7.2 ADVERTISING

A lawyer who advertises concerning legal services shall comply with the following:

(a) Subject to the requirements of Rule 7.1, a lawyer may advertise services through public media, such as a telephone directory, legal directory, newspaper or other periodical, outdoor displays, such as billboards and other signs; radio, television, and computer-accessed communications; recorded messages the public may access by dialing a telephone number; or written or electronic communication not involving solicitation as defined in Rule 7.3.

(b) A true copy or recording of any such advertisement shall be delivered or mailed to the ~~o~~Office of the ~~g~~General ~~e~~Counsel of the Alabama State Bar at its then current headquarters within three (3) days after the date on which any such advertisement is first disseminated; the contemplated duration thereof and the identity of the publisher or broadcaster of such advertisement, either within the advertisement or by separate communication accompanying said advertisement, shall be stated. Also, a copy or recording of any such advertisement shall be kept by the lawyer responsible for its content, as provided hereinafter by Rule 7.2(d), for six (6) years after its last dissemination.

(c) A lawyer shall not give anything of value to a person for recommending the lawyer's services, except that a lawyer may pay the reasonable cost of any advertisement or written communication permitted by this rule and may pay the usual charges of a not-for-profit lawyer referral service.

(d) Any communication made pursuant to this Rule shall include the name of at least one lawyer responsible for its content.

(e) Location of Practice. All advertisements and written communications provided for under these rules shall disclose, by city or town, one or more bona fide office locations of the lawyer or lawyers who will actually perform the services advertised. If the office location is outside a city or town, the county in which the office is located must be disclosed. A lawyer referral service shall disclose the geographic area in which the lawyer practices when a referral is made. For the purposes of this Rule, a bona fide office is defined as a physical location maintained by the

lawyer or law firm where the lawyer or law firm reasonably expects to furnish legal services in a substantial way on a regular and continuing basis. If an advertisement or written communication lists a telephone number in connection with a specified geographic area other than an area containing a bona fide office, appropriate qualifying language must appear in the advertisement.

~~(e)~~ **(f)** No communication concerning a lawyer's services shall be published or broadcast, either by radio, television or simulcast, unless it contains the following language, which shall be clearly legible or audible, as the case may be: "No representation is made that the quality of the legal services to be performed is greater than the quality of legal services performed by other lawyers." Lawyer referral service advertisements shall contain the following disclosure: "The hiring of a lawyer is an important decision. Before you decide to hire the lawyer to whom you are referred, ask that lawyer for written information about that lawyer's qualifications and experience." Disclosure statements which appear in type must be no smaller than one-fourth of the size of the largest type otherwise appearing in the advertisement. The disclosure statements which appear in television advertisements must remain on the television screen for at least one-half the length or duration of the television advertisement, or ten (10) seconds, whichever is greater. These disclosures, however, need not appear in advertisements in the public print media that contain no illustrations and no information other than that listed in paragraph (n)(1)-(3) of this Rule.

~~(f)~~ **(g)** If fees are stated in the advertisement, the lawyer or law firm advertising must perform the advertised services at the advertised fee, and the failure of the lawyer and/or law firm advertising to perform an advertised service at the advertised fee shall be prima facie evidence of misleading advertising and deceptive practices. The lawyer or law firm advertising shall be bound to perform the advertised services for the advertised fee and expenses for a period of not less than sixty (60) days following the date of the last publication or broadcast-, unless the advertisement specifies a shorter period. For advertisements in the yellow pages of telephone directories or other media not published more frequently than annually, the advertised fee or range of fees shall be honored for no less than one year following publication.

(h) Use of Illustrations. All illustrations used in advertisements shall present information that is directly related and objectively relevant to a viewer's possible need for legal services in a specific type of matter. Such illustrations shall be still pictures or drawings and shall contain no features that are likely to deceive, mislead, or confuse the viewer.

(i) Fields of Practice. Every advertisement and written communication that indicates one or more areas of law in which the lawyer or law firm practices shall conform to the requirements of Rule 7.6.

(j) Disclosure of Liability for Expenses Other Than Fees. Every advertisement and written communication that contains information about the lawyer's fee, including those that indicate no fee will be charged in the absence of a recovery, shall disclose whether the client will be liable for any expenses in addition to the fee.

(k) Firm Name. A lawyer shall not advertise services under a name that violates the provisions of Rule 7.7.

(l) Payment by Non-Advertising Lawyer. No lawyer shall, directly or indirectly, pay all or a part of the cost of an advertisement by a lawyer not in the same firm. Rule 1.5(e) (regarding the division of contingency fees) is not affected by this provision even though the lawyer covered by Rule 1.5(e) advertises.

(m) Language of Required Statements. Any words or statements required by this subchapter to appear in an advertisement or direct mail communication must appear in the same language in which the advertisement appears. If more than one language is used in an advertisement or direct mail communication, any words or statements required by this subchapter must appear in each language used in the advertisement or direct mail communication.

(n) Permissible Content of Advertisements. The following information in advertisements and written communications shall be presumed not to violate the provisions of paragraph (a) of this Rule:

(1) subject to the requirements of this Rule and Rule 7.7, the name of the lawyer or law firm, a listing of lawyers associated with the firm, office locations and parking arrangements, disability accommodations, telephone

numbers, Web site addresses, and electronic mail addresses, office and telephone service hours, and a designation such as "attorney" or "law firm";

(2) a listing of the name and geographic location of a lawyer or law firm as a sponsor of a public service announcement or charitable, civic, or community program or event;

(3) common salutary language such as "best wishes", "good luck", "happy holidays", or "pleased to announce"; and

(4) date of admission to the Alabama State Bar and any other bars, years of experience practicing law, number of lawyers in the advertising law firm, and a listing of federal courts and jurisdictions other than Alabama where the lawyer is licensed to practice;

(5) technical and professional licenses granted by the state or other recognized licensing authorities and educational degrees received, including dates and institutions, provided, however, attorneys licensed in Alabama may not advertise the fact that they are licensed by the Alabama State Bar;

(6) foreign language ability;

(7) fields of law in which the lawyer practices, including official certification logos, subject to the requirements of Rule 7.6 and paragraph (i) and of this Rule;

(8) prepaid or group legal service plans in which the lawyer participates;

(9) acceptance of credit cards;

(10) fee for initial consultation and fee schedule, subject to the requirements of paragraphs (g) and (j) of this Rule;

(11) the amount of professional liability insurance coverage which the lawyer or law firm has in effect;

(12) a lawyer referral service may advertise its name, location, telephone number, the referral fee charged, its hours of operation, the process by which referrals are made, the areas of law in which referrals are offered, the geographic area in which the lawyers practice to whom those responding to the advertisement will be referred, and, if applicable, its nonprofit status and the logo of its sponsoring bar association.

(o) Appearance on Television or Radio. Advertisements on the electronic media such as television and radio may contain, but are not necessarily, limited to containing, some or all of the information listed in paragraph (n) of this Rule. The information shall be articulated by a single human voice, and/or on-screen text, with no background sound other than instrumental music. No person's voice or image, other than that of a lawyer who is a member of the firm whose services are advertised, may be used in a television or radio advertisement. Visual images appearing in a television advertisement shall be limited to the advertising lawyer in front of a background consisting of a single solid color, a set of law books in an unadorned bookcase, or the lawyer's own office, with no other persons shown.

(p) Closed Captioning. All television advertisements must be closed captioned in order to be comprehended by the hearing impaired.

(q) Advertisements Originating in Other States. These rules shall apply to all radio, television and simulcast broadcast intended to be received by residents of the State of Alabama regardless of the fact that the broadcast may have originated in another state.

### **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. Advertising involves an active quest for clients, contrary to the tradition that a lawyer should not seek clientele. However, the public's need to know about legal services can be fulfilled in part through advertising. This need is particularly acute in the case of persons of moderate means who have not made~~

~~extensive use of legal services. The interest in expanding public information about legal services ought to prevail over considerations of tradition. Nevertheless, a~~  
Advertising by lawyers entails the risk of practices that are misleading or overreaching. This Rule permits 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 information that might invite the attention of those seeking legal assistance.

~~Some jurisdictions have had extensive prohibitions against television advertising, against advertising going beyond specified facts about a lawyer, or against "undignified" advertising. Television is now one of the most powerful media for getting information to the public, particularly persons of low and moderate income; prohibiting television advertising, therefore, would impede the flow of information about legal services to many sectors of the public. Limiting the information that may be advertised has a similar effect and assumes that the bar can accurately forecast the kind of information that the public would regard as relevant.~~

Neither this Rule nor Rule 7.3 prohibits communications authorized by law, such as notice to members of a class in class action litigation.

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 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, including brochures used for recruitment purposes.

## **Record of Advertising**

Paragraph (b) requires that a record of the content and use of advertising be kept in order to facilitate enforcement of this Rule. It does not require that advertising be subject to review prior to dissemination. Such a requirement would be burdensome and expensive relative to its possible benefits, and may be of doubtful constitutionality.

## **Paying Others to Recommend a Lawyer**

A lawyer is allowed to pay for advertising permitted by this Rule, but otherwise is not permitted to pay another person for channeling professional work. This restriction does not prevent an organization or person other than the lawyer from advertising or recommending the lawyer's services. Thus, a legal aid agency or prepaid legal services plan may pay to advertise legal services provided under its auspices. Likewise, a lawyer may participate in not-for-profit lawyer referral programs and pay the usual fees charged by such programs. Paragraph (c) does not prohibit paying regular compensation to an assistant, such as a secretary, to prepare communications permitted by this Rule.

## **Radio or Television Advertising**

Television is now one of the most powerful media for conveying information to the public; a blanket prohibition against television advertising, therefore, would impede the flow of information about legal services to many sectors of the public. However, the unique characteristics of electronic media, including the pervasiveness of television and radio, the ease with which these media are abused, and the passiveness of the viewer or listener, make the electronic media especially subject to regulation in the public interest. Therefore, greater restrictions on the manner of television and radio advertising are justified than might be appropriate for advertisements in the other media. To prevent abuses, including potential interferences with the fair and proper administration of justice and the creation of incorrect public perceptions or assumptions about the manner in which our legal system works, and to promote the public's confidence in the legal profession and this country's system of justice while not interfering with the free flow of useful information to prospective users of

legal services, it is necessary also to restrict the techniques used in television and radio advertising.

This Rule is designed to ensure that the advertising is not misleading and does not create unreasonable or unrealistic expectations about the results the lawyer may be able to obtain in any particular case, and to encourage the provision of useful information to the public about the availability and terms of legal services. Thus, the rule allows lawyer advertisements in which a lawyer who is a member of the advertising firm personally appears to speak regarding the legal services the lawyer or law firm is available to perform, the fees to be charged for such services, and the background and experience of the lawyer or law firm. A firm partner, shareholder or associate is a "member" of a law firm within the intent of the rule. Whether other lawyers are "members" of a firm for purposes of this Rule must be evaluated in light of criteria that include whether the lawyer's practice is physically located at the firm and whether the lawyer practices solely through the firm. There should be a presumption that lawyers other than partners, shareholders, or associates are not "members" of a law firm for purposes of this Rule.

### **RULE 7.3 DIRECT CONTACT WITH PROSPECTIVE CLIENTS**

**(a)** A lawyer shall not solicit professional employment from a prospective client ~~with whom the lawyer has no familial or current or prior professional relationship, in person or otherwise,~~ when a significant motive for the lawyer's doing so is the lawyer's pecuniary gain, unless the person contacted:

(1) is another lawyer; or

(2) has a current or prior professional relationship with the lawyer; or

(3) has a familial or close personal relationship with the lawyer.

A lawyer shall not permit employees or agents of the lawyer to solicit on the lawyer's behalf. A lawyer shall not enter into an agreement for or charge or collect a fee for professional employment obtained in violation of this Rule.

The term "solicit" includes contact in person, by telephone, telegraph, ~~or~~ facsimile transmission, email, or other electronic means, or by other communication directed to a specific recipient and includes contact by any written form of communication directed to a specific recipient and not meeting the requirements of ~~subdivision (b)(2)~~ paragraph (c) of this Rule.

~~(b) Written Communication~~

(b)(1) Written Communication. 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 on behalf of a partner, an associate, or any other lawyer affiliated with the lawyer or the lawyer's firm, a written communication to a prospective client for the purpose of obtaining professional employment if:

(i)(1) the written communication concerns an action for personal injury or wrongful death arising out of, or otherwise related to, an accident or disaster involving the person to whom the communication is addressed or a relative of that person, unless the accident or disaster giving rise to the cause of action occurred more than thirty (30) days before the mailing of the communication;

(2) the written communication concerns a civil proceeding pending in a state or federal court, unless service of process was obtained on the defendant or other potential client more than seven days prior to the mailing of the communication, or, the written communication concerns a criminal proceeding pending in a state or federal court, unless the defendant or other potential client was served with a warrant or information more than seven days prior to the mailing of the communication;

(i)(3) the written communication concerns a specific matter, and the lawyer knows or reasonably should know that the person to whom the communication is directed is represented by a lawyer in the matter;

(iii)(4) it has been made known to the lawyer that the person to whom the communication is addressed does not want to receive the communication;

(iv)(5) the communication involves coercion, duress, fraud, overreaching, harassment, intimidation, or undue influence by the lawyer;

~~(v)~~(6) the communication contains a false, fraudulent, misleading, deceptive, or unfair statement or claim or is improper under Rule 7.1; or

~~(vi)~~(7) the lawyer knows or reasonably should know that the person to whom the communication is addressed is a minor or is incompetent, or that the person's physical, emotional, or mental state makes it unlikely that the person would exercise reasonable judgment in employing a lawyer.

**(c)**~~(2)~~ In addition to the requirements of Rule 7.2, written communications to prospective clients for the purpose of obtaining professional employment are subject to the following requirements:

~~(i)~~(1) a sample copy of each written communication and a sample of the envelope to be used in conjunction with the communication, along with a list of the names and addresses of the recipients, shall be filed with the ~~e~~Office of ~~g~~General ~~e~~Counsel of the Alabama State Bar before or concurrently with the first dissemination of the communication to the prospective client or clients. A copy of the written communication must be retained by the lawyer for six (6) years. If the communication is subsequently sent to additional prospective clients, the lawyer shall file with the ~~e~~Office of ~~g~~General ~~e~~Counsel of the Alabama State Bar a list of the names and addresses of those clients either before or concurrently with that subsequent dissemination. If the lawyer regularly sends the identical communication to additional prospective clients, the lawyer shall, once a month, file with the ~~e~~Office of ~~g~~General ~~e~~Counsel a list of the names and addresses of those clients contacted since the previous list was filed;

~~(ii)~~(2) written communications mailed to prospective clients shall be sent only by regular mail, and shall not be sent by registered mail or by any other form of restricted delivery or by express mail;

~~(iii)~~(3) no reference shall be made either on the envelope or in the written communication that the communication is approved by the Alabama State Bar;

~~(iv)~~ (4) the written communication shall not resemble a legal pleading, official government form or document (federal or state), or other legal document, and

the manner of mailing the written communication shall not make it appear to be an official document;

~~(v)~~(5) the word "Advertisement" shall appear prominently in red ink on each page of the written communication, and the word "Advertisement" shall also appear in the lower left-hand corner of the envelope in 14-point or larger type and in red ink. If the communication is a self-mailing brochure or pamphlet, the word "Advertisement" shall appear prominently in red ink on the address panel in 14-point or larger type;

~~(vi)~~(6) if a contract for representation is mailed with the written communication, it will be considered a sample contract and the top of each page of the contract shall be marked "SAMPLE." The word "SAMPLE" shall be in red ink in a type size at least one point larger than the largest type used in the contract. The words "DO NOT SIGN" shall appear on the line provided for the client's signature;

~~(vii)~~(7) the first sentence of the written communication shall state: "If you have already hired or retained a lawyer in connection with [state the general subject matter of the solicitation], please disregard this letter [pamphlet, brochure, or written communication]";

~~(viii)~~(8) if the written communication is prompted by a specific occurrence (e.g., death, recorded judgment, garnishment) the communication shall disclose how the lawyer obtained the information prompting the communication; . The disclosure required by this Rule shall be specific enough to help the recipient understand the extent of the lawyer's knowledge regarding the recipient's particular situation;

~~(ix)~~(9) a written communication seeking employment by a specific prospective client in a specific matter shall not reveal on the envelope, or on the outside of a self-mailing brochure or pamphlet, the nature of the client's legal problem; ~~and~~

(10) every written communication shall be accompanied by a written statement detailing the background, training and experience of the lawyer or law firm. This statement must include information about the specific

experience of the advertising lawyer or law firm in the area or areas of law for which professional employment is sought. Every written communication disseminated by a lawyer referral service shall include a statement advising the prospective client that a written statement detailing the background, training, and experience of the lawyer to whom the client is referred is available, upon request, from the lawyer;

(11) every written communication shall be accompanied by a written statement disclosing the amount of professional liability insurance coverage which the lawyer or law firm has in effect;

(12) if a lawyer other than the lawyer whose name or signature appears on the communication will actually handle the case or matter, or if the case or matter will be referred to another lawyer or law firm, any written communication concerning a specific matter shall include a statement so advising the client; and

~~(13)~~ a lawyer who uses a written communication must be able to prove the truthfulness of all the information contained in the written communication.

(d) Notwithstanding the prohibitions in paragraphs (a) and (b), a lawyer may participate with a prepaid or group legal service plan operated by an organization not owned or directed by the lawyer which uses written, recorded or electronic communication or in-person, telephone or real-time electronic contact to solicit memberships or subscriptions for the plan from persons who are not known to need legal services in a particular matter covered by the plan.

### **Comment**

There is a potential for abuse inherent in direct solicitation by a lawyer in person or by telephone, telegraph, or facsimile transmission of prospective clients known to need legal services. Direct solicitation subjects the nonlawyer to the private importuning of a trained advocate, in a direct interpersonal encounter. A prospective client often feels overwhelmed by the situation giving rise to the need for legal services and may have an impaired capacity for reason, judgment, and protective self-

interest. Furthermore, the lawyer seeking to be retained is faced with a conflict stemming from the lawyer's own interest, which may color the advice and representation offered the vulnerable prospect.

The situation is therefore fraught with the possibility of undue influence, intimidation, and overreaching. This potential for abuse inherent in direct solicitation of prospective clients justifies some restrictions, particularly since the advertising permitted under Rule 7.2 offers an alternative means of communicating necessary information to those who may be in need of legal services. Advertising makes it possible for a prospective client to be informed about the need for legal services, and about the qualifications of available lawyers and law firms, without subjecting the prospective client to direct personal persuasion that may overwhelm the client's judgment.

The use of general advertising, rather than direct private contact, to transmit information from lawyer to prospective client will help to assure that the information flows cleanly as well as freely. Advertising is in the public view and thus subject to scrutiny by those who know the lawyer. This informal review is likely to help guard against statements and claims that might constitute false or misleading communications in violation of Rule 7.1. Direct, private communications from a lawyer to a prospective client are not subject to such third-person scrutiny and consequently are much more likely to approach (and occasionally cross) the line between accurate representations and those that are false and misleading.

Direct written communication seeking employment by specific prospective clients generally presents less potential for abuse or overreaching than in-person solicitation and is therefore not prohibited for most types of legal matters, but is subject to reasonable restrictions, as set forth in this Rule, designed to minimize or preclude abuse and overreaching and to ensure the lawyer's accountability if abuse should occur. This Rule allows targeted mail solicitation of potential plaintiffs or claimants in personal injury and wrongful death causes of action or other causes of action that relate to an accident, disaster, death, or injury, but only if the communication is not mailed until thirty (30) days after the incident. This restriction is reasonably required by the sensitized state of the potential clients, who may be either injured or grieving over the loss of a family member, and the abuses

that experience has shown can exist in this type of solicitation.

For similar reasons, this Rule permits communication regarding pending civil or criminal litigation only if mailed seven (7) days or more after service of process, warrant or information.

Common examples of written communications that must meet the requirements of subparagraph (b) of this Rule are direct mail solicitation sent to individuals or groups selected because they share common characteristics, e.g., persons named in traffic accident reports or notices of foreclosure. Communications not ordinarily sent on an unsolicited basis to prospective clients are not covered by this Rule. Also not covered by this Rule are responses by lawyers and law firms to requests for information from a prospective client or newsletters or brochures published for clients, former clients, those requesting it, or those with whom the lawyer or law firm has a familial or current or prior professional relationship.

Letters of solicitation and the envelopes in which they are mailed should be clearly marked "Advertisement." This will avoid the perception by the recipient that there is a need to open the envelope because it is from a lawyer or law firm, when the envelope contains only a solicitation for legal services. With the envelopes and letters clearly marked "Advertisement", the recipient can choose to read the solicitation or not to read it, without fear of legal repercussions.

The requirement that letters of solicitation and the envelopes in which they are mailed be marked "Advertisement" does not apply to communications sent in response to requests of potential clients or their spokespersons or sponsors. General announcements by lawyers, including changes in personnel or office location, do not constitute communications soliciting professional employment from a client known to be in need of legal services within the meaning of this Rule.

In addition, the lawyer or law firm sending the letter of solicitation shall reveal the source of information used to determine that the recipient has a potential legal problem. Disclosure of the source will help the recipient to understand the extent of knowledge the lawyer or law firm has regarding the recipient's particular situation and will

avoid misleading the recipient into believing that the lawyer has particularized knowledge about the recipient's matter if the lawyer does not.

General mailings to persons not known to need legal services, as well as mailings targeted to specific persons or potential clients, are permitted by this Rule. However, these mailings constitute advertisement and are thus subject to the requirements of Rule 7.2 concerning delivery of copies to the general counsel, record keeping, inclusion of a disclaimer, and performance of the services offered at the advertised fee.

There is far less likelihood that a lawyer would engage in abusive practices against an individual who is a former client, or with whom the lawyer has a close personal or family relationship, or in situations in which the lawyer is motivated by considerations other than the lawyer's pecuniary gain. Nor is there a serious potential for abuse when the person contacted is a lawyer. Consequently, the general prohibition in Rule 7.3(a) and the requirements of Rule 7.3(c) are not applicable in those situations. Also, paragraph (a) is not intended to prohibit a lawyer from participating in constitutionally protected activities of public or charitable legal service organizations or bona fide political, social, civic, fraternal employee or trade organizations whose purposes include providing or recommending legal services to its members or beneficiaries.

But even permitted forms of solicitation can be abused. Thus, any solicitation which contains information which is false or misleading within the meaning of Rule 7.1, which involves coercion, duress or harassment within the meaning of Rule 7.3(b)(5), or which involves contact with a prospective client who has made known to the lawyer a desire not to be solicited by the lawyer within the meaning of Rule 7.3(b)(4) is prohibited. Moreover, if after sending a letter or other communication to a client as permitted by Rule 7.2 the lawyer receives no response, any further effort to communicate with the prospective client may violate the provisions of Rule 7.3(b).

This Rule would not prohibit a lawyer from contacting representatives of organizations or groups that may be interested in establishing a group or prepaid legal plan for its members, insureds, beneficiaries, or other third parties for the purpose of informing such entities of the availability of and details concerning the plan or

arrangement that the lawyer or the law firm is willing to offer. This form of communication is not directed to a specific prospective client known to need legal services related to a particular matter. Rather, it is usually addressed to an individual acting in a fiduciary capacity seeking a supplier of legal services for others who may, if they choose, become prospective clients of the lawyer. Under these circumstances, the activity which the lawyer undertakes in communicating with such representatives and the type of information transmitted to the individual are functionally similar to and serve the same purpose as advertising permitted under Rule 7.2.

#### **RULE 7.4      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 home pages or World Wide Web sites, unsolicited electronic mail communications, and information concerning a lawyer's or law firm's services that appears on World Wide Web search engine screens and elsewhere.

**(b)**      Internet Presence. All World Wide Web sites and home pages 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 one or more bona fide office locations of the lawyer or law firm, in accordance with paragraph (e) of Rule 7.2; and

(3) are considered to be information provided upon request and, therefore, are otherwise governed by the requirements of Rule 7.5.

**(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 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 applicable requirements of Rule 7.3 are met;

(2) the communication discloses one or more bona fide office locations of the lawyer or lawyers who will actually perform the services advertised, in accordance with paragraph (e) of Rule 7.2; and

(3) the subject line of the communication states "legal advertisement."

(d) Advertisements. All computer-accessed communications concerning a lawyer's or law firm's services, other than those subject to subdivisions (b) and (c) of this Rule, are subject to the requirements of Rules 7.1 and 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.

The specific regulations that govern computer-accessed communications differ according to the particular variety of communication employed. For example, a lawyer's Internet Web site is accessed by the viewer upon the viewer's initiative and, accordingly, the standards governing such communications correspond to the rules applicable to information provided to a prospective client at the prospective client's request.

In contrast, 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.

This Rule is not triggered merely because someone other than the lawyer gratuitously links to, or comments on, a lawyer's Internet Web site.

**RULE 7.5 INFORMATION ABOUT A LAWYER'S  
SERVICES PROVIDED UPON REQUEST**

**(a)** Generally. Information provided about a lawyer's or law firm's services upon request shall comply with the requirements of Rules 7.1 and 7.2 unless otherwise provided in this subchapter.

**(b)** Request for Information by Potential Client. Whenever a potential client shall request information regarding a lawyer or law firm for the purpose of making a decision regarding employment of the lawyer or law firm:

(1) the lawyer or law firm shall promptly furnish (by mail if requested) the written (including computer-accessed) information described in subdivision (c) of this Rule;

(2) the lawyer or law firm may furnish such additional factual information regarding the lawyer or law firm deemed valuable to assist the client;

(3) if the information furnished to the client includes a fee contract, the top of each page of the contract shall be marked "SAMPLE" in red ink in a type size one size larger than the largest type used in the contract and the words "DO NOT SIGN" shall appear on the client signature line; and

(4) notwithstanding the provisions of paragraph (a)(2) of Rule 7.1, information provided a potential client in response to a potential client's request may contain factually verifiable statements concerning past results obtained by the lawyer or law firm, if, either alone or in the context in which they appear, such statements are not otherwise misleading.

(c) Information Regarding Qualifications. Each lawyer or law firm that advertises the lawyer's or law firm's availability to provide legal services shall have available in written form for delivery to any potential client:

(1) a factual statement detailing the background, training, and experience of each lawyer or the law firm; and

(2) if the lawyer or law firm claims special expertise in the representation of clients in special matters or publicly limits the lawyer's or law firm's practice to special types of cases or clients, written information setting forth the factual details of the lawyer's experience, expertise, background, and training in such matters.

(d) Proof of Statements or Claims. Upon reasonable request by the Alabama State Bar, a lawyer shall promptly provide proof that any statement or claim made in any advertisement or written communication, as well as the information furnished to a prospective client as authorized or required by these rules, is in compliance with Rules 7.1 and 7.2.

(e) Disclosure of Intent to Refer Matter to Another Lawyer or Law Firm. A statement and any information furnished to a prospective client, as authorized by paragraph (b) of this Rule, that a lawyer or law firm will

represent a client in a particular type of matter, without appropriate qualification, shall be presumed to be misleading if the lawyer reasonably believes that a lawyer or law firm not associated with the originally retained lawyer or law firm will be associated or act as primary counsel in representing the client. In determining whether the statement is misleading in this respect, the history of prior conduct by the lawyer in similar matters may be considered.

#### Comment

Consumers and potential clients often will find it useful to receive factual, objective information from lawyers who are advertising their availability to handle legal matters. The rule provides that potential clients may request such information and be given an opportunity to review that information without being required to come to a lawyer's office to obtain it. Selection of appropriate counsel is based upon a number of factors. However, selection can be enhanced by potential clients having factual information at their disposal for review and comparison. This Rule does not require a lawyer or law firm to provide information concerning the lawyer's or law firm's services when requested if the lawyer or law firm is not interested in representing the person or entity requesting the information.

#### **RULE 7.4 7.6 COMMUNICATION OF FIELDS OF PRACTICE**

A lawyer may communicate the fact that the lawyer does or does not practice in particular fields of law. A lawyer shall not state or imply that the lawyer is a specialist except as follows:

(a) A lawyer admitted to engage in patent practice before the United States Patent and Trademark Office may use the designation "Patent Attorney" or a substantially similar designation;

(b) A lawyer engaged in admiralty practice may use the designation "Admiralty," "Proctor in Admiralty," or a substantially similar designation; or

(c) A lawyer may communicate the fact that the lawyer has been certified as a specialist in a field of law by a named organization or authority, but only if such certification is granted by an organization previously approved by the Alabama State Bar Board of Legal Certification to grant such certifications.

#### Comment

This Rule permits a lawyer to indicate areas of practice in communications about the lawyer's services, for example, in a telephone directory or other advertising, provided the advertising lawyer or law firm actually practices in those areas of law at the time the advertisement is disseminated. If a lawyer practices only in certain fields, or will not accept matters except in such fields, the lawyer is permitted so to indicate. However, stating that the lawyer is a "specialist," practices a "specialty," or "specializes in" a particular field is not permitted unless in accordance with Rule 7. ~~4~~(6)(c). These terms have acquired a secondary meaning implying formal recognition as a specialist. Hence, use of these terms may be misleading.

Recognition of specialization in patent matters is a matter of long-established policy of the Patent and Trademark Office. Designation of admiralty practice has a long historical tradition associated with maritime commerce and the federal courts.

Paragraph (c) provides for certification as a specialist in a field of law where the Alabama State Bar Board of Legal Specialization has granted an organization the right to grant certification. Certification procedures imply that an objective entity has recognized a lawyer's higher degree of specialized ability than is suggested by general licensure to practice law. Those objective entities may be expected to apply standards of competence, experience, and knowledge to insure that a lawyer's recognition as a specialist is meaningful and reliable. In order to insure that consumers can obtain access to useful information about an organization granting certification, the name of the certifying organization or agency must be included in any communication regarding certification.

**RULE 7.5 7.7 FIRM NAMES  
AND LETTERHEADS**

**(a)** A lawyer shall not use a firm name, letterhead, or other professional designation that violates Rule 7.1. A trade name may be used by a lawyer in private practice if the name is not deceptive and ~~it~~ does not imply a connection with a government agency or with a public or charitable organization, does not imply that the firm is something other than a private law firm, and is not otherwise in violation of Rule 7.1 or Rule 7.4. A lawyer in private practice may use the term "legal clinic" or "legal services" in conjunction with the lawyer's own name if the lawyer's practice is devoted to providing routine legal services for fees that are lower than the prevailing rate in the community for those services.

**(b)** A lawyer shall not advertise under a trade or fictitious name, except that a lawyer who actually practices under a trade name as authorized by ~~subdivision (b)~~ paragraph (a ) may use that name in advertisements. A lawyer who advertises under a trade or fictitious name shall be in violation of this Rule unless the same name is the law firm name that appears on the lawyer's letterhead, business cards, office sign, and fee contracts, and appears with the lawyer's signature on pleadings and other legal documents.

**~~(b)~~(c)** A law firm with offices in another jurisdiction may use in Alabama the name it uses in the other jurisdiction, provided the use of that name would comply with these rules. A firm with any lawyers not licensed to practice in Alabama must, if such lawyer's name appears on the firm's letterhead, state that the lawyer is not licensed to practice in Alabama.

**~~(c)~~(d)** A lawyer or law firm may indicate on any letterhead or other communication permitted by these rules other jurisdictions in which the lawyer or the members or associates of the law firm are admitted to practice.

**~~(d)~~(e)** The name of a lawyer holding a public office shall not be used in the name of a law firm, or in communications on its behalf, during any substantial period in which the lawyer is not practicing with the firm.

**(f)** Lawyers may state or imply that they practice in a partnership or authorized business entity only when that is the fact.

(g) The name of a law firm may not contain the names of attorneys who are not partners or stockholders in the firm, except that the names of deceased partners or stockholders may be used in the firm name if there has been a continuing succession in the firm's identity.

(h) A law firm may not include in its name "and associates" unless the firm employs at least one associate.

### Comment

A firm may be designated by the names of all or some of its members, by the names of deceased members where there has been a continuing succession in the firm's identity, or by a trade name such as the "ABC Legal Clinic." Although the United States Supreme Court has held that legislation may prohibit the use of trade names in professional practice, use of such names in law practice is acceptable so long as it is not misleading. If a private firm uses a trade name that includes a geographical name such as "Springfield Legal Clinic," ~~an express disclaimer that it is a public legal aid agency may be required to avoid a misleading implication.~~ express language must be included wherever the trade name appears which clearly states that the firm is not a public legal aid agency. It may be observed that any firm name including the name of a deceased partner is, strictly speaking, a trade name. The use of such names to designate law firms has proven a useful means of identification. However, it is misleading to use the name of a lawyer not associated with the firm or a predecessor of the firm.

Paragraph (a) precludes use in a law firm name of terms that imply that the firm is something other than a private law firm. Two examples of such terms are "academy" and "institute." Paragraph (b) precludes use of a trade or fictitious name suggesting that the firm is named for a person when in fact such a person does not exist or is not associated with the firm. Although not prohibited per se, the terms "legal clinic" and "legal services" would be misleading if used by a law firm that did not devote its practice to providing routine legal services at prices below those prevailing in the community for like services.

Paragraph (b) of this Rule also precludes a lawyer from advertising under a nonsense name designed to obtain an advantageous position for the lawyer in alphabetical directory listings unless the lawyer actually practices under that nonsense name. An example of such an improper name is "A. Aaron Able." Advertising under a law firm name that differs from the firm name under which the lawyer actually practices violates both this Rule and paragraph (a) of Rule 7.1.

With regard to subdivision (d), lawyers sharing office facilities, but who are not in fact partners, may not denominate themselves as, for example, "Smith and Jones," for that title suggests partnership in the practice of law.

#### **RULE ~~7.6~~ 7.8      PROFESSIONAL CARDS OF NONLAWYERS**

A lawyer shall not cause or permit a business card of a nonlawyer which contains the lawyer's or firm's name to contain a false or misleading statement or omission to the effect that the nonlawyer is a lawyer. A business card of a nonlawyer is not false and misleading which clearly identifies the nonlawyer as a "Legal Assistant," provided that the individual is employed in that capacity by a lawyer or law firm, that the lawyer or law firm supervises and is responsible for the law related tasks assigned to and performed by such individual, and that the lawyer or law firm has authorized the use of such cards.

#### **Comment**

Lawyers employ various persons who are nonlawyers to engage in activities on behalf of the lawyers. These nonlawyer employees are not subject to the disciplinary process of the Alabama State Bar, although the lawyer may be disciplined for their conduct in appropriate cases. See Rule 5.3. These employees include secretaries, investigators, legal assistants, paralegals, librarians, law clerks, messengers, accountants, bookkeepers, office managers, firm administrators, etc. In many cases, these employees will come into contact with clients and with the general public. In these cases, a professional card or calling card may be useful to the employee, the client, and the public.

The rule is directed against false and misleading business cards. A lawyer must not permit or cause a business card of a nonlawyer employee to be either false or misleading. Particular care should be taken to ensure that no false impression is given that a nonlawyer is a lawyer. In the design of business cards, the position of nonlawyer employee should be legibly and prominently indicated in close proximity to the employee's name. Cards that visually present a lawyer's or law firm's name in such a prominent manner as to obscure the employee's nonlawyer status are prohibited. The card should serve the function of identifying the name of the individual employee, but it should not be susceptible to an interpretation by the casual observer that it is the card of a lawyer, as opposed to that of an employee of a lawyer or law firm.

Because the term "legal assistant" contains the designation "legal" and thus might reasonably be considered as prohibited by this Rule, a safe harbor was provided so as to permit use of the term on business cards.



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September 12, 2007

Re: Proposed changes to the *Alabama Rules of Professional Conduct*.

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Dear Fellow Commissioners:

I want to bring to your attention a matter that concerns those of us who advertise and even those of us who don't: proposed amendments to the *Alabama Rules of Professional Conduct* (the "Rules"), which are scheduled to be voted on as **"action item" #6 at this Friday's Board of Bar Commissioner's meeting on September 14, 2007**. These proposed amendments to the Rules are based almost without change from similar Rules of the Florida Bar.

For the reasons stated herein, I believe the proposed rules violate the First Amendment because they propose restrictions on commercial speech that is neither false nor misleading. I further believe the amendments are not motivated by a state interest substantial enough to warrant broad restrictions on commercial speech, and they therefore would likely face a successful First Amendment challenge if adopted. Indeed, many of the identical proposed rules were struck down as unconstitutional in *Schwartz v. Welch*, 890 F. Supp. 565 (S.D. Miss. 1995); cf. *Texans Against Censorship, Inc. v. State Bar of Texas*, 888 F. Supp. 1328 (E.D. Tex. 1995).

The intent and effect of these proposed Rules is to severely restrict communications made by lawyers and advertising or marketing by lawyers. (Inexplicably, the terms "communications", "advertising" and "advertisement" are not defined anywhere in the current or the proposed Rules, but apparently encompasses print, audio, video, computer, website, office signs, letterhead, etc.) Although some lawyers would welcome a rule prohibiting *all* lawyer advertising, the reality is that marketing by lawyers has always existed. The only controversy has been over the *form*, not the *existence*, of lawyer advertising.

The United States Supreme Court has repeatedly ruled that commercial speech is clothed with the protections of the First and Fourteenth Amendments. *Virginia State Pharmacy Board v. Virginia Citizens Consumer Council*, 425 U.S. 748, at 761-762, 96 S.Ct., at 1825 (1976). It approved of lawyer advertising in certain forms beginning with *Bates v. State Bar of Arizona*, 433 U.S. 350, 97 S.Ct. 2691, 53 L.Ed.2d 810 (1977). The rule established in *Bates* was that although advertising by attorneys may not be subjected to blanket suppression, there may be reasonable restrictions on the time, place, and manner of attorney advertising.

In 1980, the U. S. Supreme Court decided the case of *Central Hudson Gas & Electric Corp. v. Public Service Comm. of New York*, 447 U.S. 557, 100 S.Ct. 2343, 65 L.Ed.2d 341

(1980), which laid down the test still followed today on the permissible breadth of restrictions by the State on commercial speech. Commercial speech that concerns unlawful activity or is misleading may be freely regulated or even banned. Commercial speech that falls into neither of those categories may be regulated only if the government satisfies a test consisting of three related prongs:

First, the government must assert a *substantial interest* in support of its regulation; Second, the government must demonstrate that the restriction on commercial speech *directly* and *materially* advances that interest; and Third, the regulation must be *narrowly drawn*.

For the reasons listed herein, I believe some of these Rules do not pass the Supreme Court's intermediate scrutiny test set out in *Central Hudson*.

As the Court stated in its more recent case of *Florida Bar v. Went For It, Inc.*, 515 U.S. 618, 115 S.Ct. 2371, 132 L.Ed.2d 541 (1995):

"Under *Central Hudson's* second prong, the State must demonstrate that the challenged regulation "advances the Government's interest 'in a direct and material way.'" *Rubin v. Coors Brewing Co.*, 514 U.S. 476, 487, 115 S.Ct. 1585, 1592, 131 L.Ed.2d 532 (1995), quoting *Edenfield, supra*, 507 U.S., at 767, 113 S.Ct., at 1798. That burden, we have explained, "is not satisfied by mere speculation or conjecture; rather, a governmental body seeking to sustain a restriction on commercial speech must demonstrate that the harms it recites are real and that its restriction will in fact alleviate them to a material degree." 514 U.S., at 487, 115 S.Ct., at 1592, quoting *Edenfield, supra*, 507 U.S., at 770-771, 113 S.Ct., at 1800. In *Edenfield*, the Court invalidated a Florida ban on in-person solicitation by certified public accountants (CPA's). We observed that the State Board of Accountancy had "present[ed] no studies that suggest personal solicitation of prospective business clients by CPA's creates the dangers of fraud, overreaching, or compromised independence that the Board claims to fear." 507 U.S., at 771, 113 S.Ct., at 1800. Moreover, "[t]he record [did] not disclose any anecdotal evidence, either from Florida or another State, that validate[d] the Board's suppositions." *Ibid*. In fact, we concluded that the only evidence in the record tended to "contradic[t], rather than strengthe[n], the Board's submissions." *Id.*, at 772, 113 S.Ct., at 1801. Finding nothing in the record to substantiate the State's allegations of harm, we invalidated the regulation." 115 S.Ct. at 2377. (Emphasis added).

One member of the Alabama State Bar committee which recommended these amendments to the advertising Rules in 2002 told me he was aware of no studies or other evidence undertaken or relied upon by the Bar before very similar amendments were passed in 2002. I am aware of no studies the Bar has undertaken since 2002 to substantiate the Bar's allegations of harm to justify the adoption of the current amendments. Indeed, the Office of General Counsel's own statistics show that of the 3,258 total violations of the Rules of Professional Conduct in 2006, only 8 violations were for false and misleading advertising.

**only 0.245% of all violations. You read that right: less than one quarter of one percent of all ethics violations.** See *Most Violated Rules 2006.doc*, internal document of the Office of General Counsel. The fact that the Florida Bar did some studies many years ago to support the amendments to its Rules does not save these proposed Rules from failing to satisfy the second and third prongs of *Central Hudson*.

I don't come lightly to the conclusion that these proposed rules are designed to severely restrict most attorney advertising and to outright ban some attorney advertising.

Make up your own mind by considering the following: Both the current and the proposed Rule 7.1 state that any statements made about a lawyer's services must be truthful and not misleading. No argument there. However, the new Official Comment to proposed Rule 7.1 states as follows:

*"[A]nother example of a misleading omission is an advertisement for a law firm that states that all the firm's lawyers are juris doctors but does not disclose that a juris doctorate is a law degree rather than a medical degree of some sort and that virtually any law firm in the United States can make the same claim. Although this rule permits lawyers to list the jurisdictions and courts to which they are admitted, it also would be misleading for a lawyer who does not list other jurisdictions or courts to state that the lawyer is a member of the Alabama Bar, standing by itself, that otherwise truthful statement implies falsely that the lawyer possesses a qualification not common to virtually all lawyers practicing in Alabama. The latter 2 examples of misleading omissions also are examples of unfair advertising. (Emphasis added.)"*

I cannot read Rule 7.1 and *reasonably* come to the same conclusion as the author of the Comment, nor can I see how the true statement of being a licensed Alabama attorney would ever mislead a minimally reasonable person. Consider the Preamble to the Rules of Professional conduct under *Scope*:

*"The Rules of Professional Conduct are rules of reason. They should be interpreted with reference to the purposes of legal representation and of the law itself." (Emphasis added.)*

If the above Comment is any indication of what types of seemingly innocuous statements the Bar will consider to be misleading, and thus subject the offending lawyer to discipline, then a reasonably prudent lawyer will either refrain from making any "advertisement" (whatever the Bar may interpret that term to be) or will only do so after first submitting it to the Bar for its approval. The Florida Bar, when adopting the nearly identical rule, also provided a mechanism for "voluntary" pre-submission of advertisements to the Florida Bar for approval. These Rules do not provide for such a mechanism (which would also implicate prior restraint issues contrary to the First Amendment).

So proposed Rule 7.1 says that there are certain things that you cannot say.

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Rule 7.1(a)(4) provides that:

*"...A lawyer shall not make or cause to be made a false or misleading communication about the lawyer or the lawyer's services. A communication is false or misleading if it:*

*(4) compares the quality of the lawyer's services with the quality of other lawyers' services...".*

The Official Comment to Rule 7.1(a)(4), under the heading "*Prohibited Information*", states that:

*"...The prohibition in paragraph (a)(4) of comparisons of lawyers' services would preclude a lawyer from representing that the lawyer or the lawyer's law firm is "the best," "one of the best," or "one of the most experienced" in a field of law."*

Does this preclude the truthful statement that the lawyer:

- "holds Martindale-Hubbell's AV Rating (the highest rating)";
- or that the lawyer has been "selected for Best Lawyers in America";
- or that the lawyer has been "selected as member, Million Dollar Advocates Forum";
- or "Practicing Family Law to best serve your needs";
- or "knowledgeable about the law"?

Apparently the Virginia State Bar's Standing Committee on Legal Advertising thinks so.

In September 2001, a Virginia law firm broadcast radio and television ads stating-- truthfully-- that three of its lawyers were included in the ninth edition of the national publication of *The Best Lawyers in America*. Other lawyers filed a complaint and the committee issued Legal Advertising Opinion A-0114 in June, 2002, an advisory opinion that concluded the ads contained misleading statements in violation of Rule 7.1(a)(3) of the Virginia Rules of Professional Conduct (which has nearly identical language to Alabama's proposed Rule 7.1(a)(4)).

That rule says lawyers cannot "use or participate in the use of any form of public communication" that "contains a false, fraudulent, misleading or deceptive statement or claim." Examples of such banned communication include advertisements that compare "the lawyer's services with other lawyers' services, unless the comparison can be factually substantiated."

The Committee was quoted as follows: "This committee continues to adhere to the belief that such statements that use extravagant or self-laudatory words are designed to and in fact mislead laypersons to whom they are directed and, as such, undermine public confidence in our legal system," the panel wrote.

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However, the Eleventh Circuit Court of Appeals in *Mason v. Florida Bar*, 208 F.3d 952 (11th Cir. 2000), struck down a Florida Bar ban on "self-laudatory" statements. In *Mason*, he was rated "AV" by Martindale-Hubbell and wished to publish this truthful fact in a proposed yellow pages advertisement that included his "AV" rating and the phrase "Highest Rating Martindale-Hubbell National Law Directory." The Florida Bar found the "Highest Rating" claim in potential violation of a rule against "merely self-laudatory" claims in advertising, and ordered Mason to include a "full explanation" of the rating including "that the ratings and participation are based 'exclusively on . . . opinions expressed by . . . confidential sources' and that these publications do not undertake to rate all Florida attorneys."

Mason challenged the ban and lost in federal district court but on appeal the Eleventh Circuit applied the *Central Hudson* analysis and reversed. Under the third prong of *Central Hudson*, the *Mason* court found that Florida had failed to provide the necessary evidence to prove that the disclosure order targeted an "identifiable harm" and mitigated that harm in a "direct and effective manner" as required by *Ibanez v. Fla. Dep't of Bus. & Prof'l Regulation*, 512 U.S. 136 (1994), and *Edenfield v. Fane*, 507 U.S. 761, 767 (1993).

Thus, at least this portion of proposed Rule 7.1 appears to be unconstitutional under current Eleventh Circuit precedent.

Also consider proposed Rule 7.1(d) which prohibits certain "visual and audio portrayals":

*"Prohibited Visual and Verbal Portrayals. Visual or verbal descriptions, depictions, or portrayals of persons, things, or events must be objectively relevant to the selection of an attorney and shall not be deceptive, misleading, or manipulative."*

That doesn't sound so bad. But consider the Official Comment entitled "*Prohibited information*":

*"...Paragraph (d) prohibits visual or verbal descriptions, depictions, or portrayals in any advertisement which create suspense, or contain exaggerations or appeals to the emotions, call for legal services, or create consumer problems through characterization and dialogue ending with the lawyer solving the problem. ... As an example, a drawing of a fist, to suggest the lawyer's ability to achieve results, would be barred. Examples of permissible illustrations would include a graphic rendering of the scales of justice to indicate that the advertising attorney practices law, a picture of the lawyer, or a map of the office location. However, a drawing of a fist, to suggest the lawyer's ability to achieve results, would be barred." (Emphasis added.)*

Any effective legal advertisement will point out the need for the lawyer's services and how that need or legal problem can be solved. For instance, does the visual or audio depiction of a car crash and resulting personal injuries combined with a video or audio statement such as "*Injured? We want to help! Call the Law Firm of Joe Blow, Attorney at Law*", or "*If you've been injured, call the Law Firm of Joe Blow, Attorney at Law*" violate this rule? Isn't that what

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marketing is supposed to do: point out the need for legal services and provide a solution? What is misleading about such an advertisement? What objective criteria will be used to determine if an advertisement contains "*suspense*" or "*appeals to the emotions*"? Is this a "narrowly drawn" regulation as required by *Central Hudson*?

Proposed Rule 7.2(h) states:

*"Use of Illustrations. All illustrations used in advertisements shall present information that is directly related and objectively relevant to a viewer's possible need for legal services in a specific type of matter. Such illustrations shall be still pictures or drawings and shall contain no features that are likely to deceive, mislead, or confuse the viewer."* (Emphasis added.)

What objective criteria will be used to decide if an "illustration" in an advertisement is "*likely to confuse the viewer*"? Since only "still" illustrations are permissible, no moving video would be allowed--only still pictures--under the interaction of Rule 7.2(h) with Rule 7.2(o): no picture of a crash about to happen and the shock of the driver or passengers, no pictures of a smoking wreck, etc. No drama at all would be permissible because this would not be a "*still picture or drawing*" and might "*appeal to emotions*".

Proposed Rule 7.2(j) states:

*"(j) Disclosure of Liability For Expenses Other Than Fees. Every advertisement and written communication that contains information about the lawyer's fee, including those that indicate no fee will be charged in the absence of recovery, shall disclose whether the client will be liable for any expenses in addition to the fee."*

Thus, a blanket decision would need to be made in advance for all cases, before they are individually evaluated, as to whether or not the client would be responsible for any expenses and in what amounts.

Television and radio ads are even more restricted. Proposed Rule 7.2(o) governs ads on radio and TV (and other electronic media) and provides that:

*"Appearance on Television or Radio. Advertisements on the electronic media such as television and radio may contain, but are not necessarily, limited to containing, some or all of the information listed in paragraph (n) of this rule. The information shall be articulated by a single human voice, or on-screen text, with no background sound other than instrumental music. No person's voice or image, other than that of a lawyer who is a member of the firm whose services are advertised, may be used in a television or radio advertisement. Visual images appearing in a television advertisement shall be limited to the advertising lawyer in front of a background consisting of a single solid color, a set of law books in an unadorned bookcase, or the lawyer's own office, with no other office personnel shown."* (Emphasis added.)

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Thus, no actors portraying a lawyer or individuals involved in a demonstration or re-enactment of an event could be used, and the background must be limited to only "...a single solid color, a set of law books in an unadorned bookcase, or the lawyer's own office, with no other office personnel shown."

None of these prohibited items are false or misleading. The Bar has no "substantial interest" under *Central Hudson* in regulating whether a lawyer's bookcase is "adorned" or not, the colors of the background in the video, or whether the event is filmed in the lawyer's own office or not. This is simply beyond the Bar's power to regulate.

The Official Comments to Rule 7.2 state that:

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

The term "useful" does not provide an objective standard to give notice to the advertising lawyer about what is permissible and what is prohibited by these Rules. The phrase "presented in a nonsensational manner" is even more subjective and provides very little, if any, guidance to the ethical lawyer motivated to conform his or her behavior and practice to these Rules.

To rationalize the restrictions of Rule 7.2(o), the Official Comments state:

*"...the unique characteristics of electronic media, including the pervasiveness of television and radio, the ease with which these media are abused, and the passiveness of the viewer or listener, make the electronic media especially subject to regulation in the public interest. Therefore, greater restrictions on the manner of television and radio advertising are justified than might be appropriate for advertisements in the other media. To prevent abuses, including potential interferences with the fair and proper administration of justice and the creation of incorrect public perceptions or assumptions about the manner in which our legal system works, and to promote the public's confidence in the legal profession and this country's system of justice while not interfering with the free flow of useful information to prospective users of legal services, it is necessary also to restrict the techniques used in television and radio advertising."* (Emphasis added.)

It has been my experience (and my common sense) that the average TV viewer in possession of the remote control is anything but passive. If what he or she sees doesn't immediately appeal to them, it's time to surf on to the next channel. They are totally in control of their TV--and advertising--viewing environment. In fact, widely-available electronic devices, e.g., TiVo, allow viewers to fast forward through advertisements or cut out advertisements completely.

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Proposed Rule 7.4 addresses "computer-accessed communications", i.e., websites and email, and also including "information regarding a lawyer's or law firm's services that is read, viewed, or heard directly through the use of a computer." Rule 7.4(b)(1) provides that:

*"(b) Internet Presence. All World Wide Web sites and home pages 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; ...". (Emphasis added.)*

So proposed Rule 7.4 says that there are certain things that you **must** say. Proposed Rule 7.5 also mandates certain information that **must** be provided to the prospective client.

Compare the **prohibition** of Rule 7.1 according to the Comment thereto that:

*"...it also would be misleading for a lawyer who does not list other jurisdictions or courts to state that the lawyer is a member of the Alabama Bar..."*

...and the **allowance** of Rule 7.2(n)(2) to disclose:

*"...date of admission to the Alabama State Bar and any other bars,*

...with the **requirement** of proposed Rule 7.4(b)(1) of mandated information to be provided to those who access your website that

*"[A]ll Web sites and home pages 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;..."*

Thus, if you state on your Web site that you are a "member of the Alabama State Bar" you have complied with Rule 7.4(b)(1) but violated Rule 7.1 which contradicts Rule 7.2(n)(2). Is this a rational, fair, and just set of Rules? Are these proposed amendments "rules of reason" that the Preamble/Scope to the Rules says they are designed to be?

These are but a few examples of the effects of these Rules. These proposed Rules contain a plethora of fundamentally unfair traps for the unwary ethical practitioner. Please vote NO on the proposed advertising rules changes at our meeting this Friday, September 14, 2007.

Sincerely,

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L. Thomas Ryan, Jr.

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# MOST VIOLATED RULES OF PROFESSIONAL CONDUCT

September 1992 - December 2006

Rule 1.3	Willful neglect [636]
Rule 1.4	Communication [518]
Rule 8.4(g)	Conduct adversely reflecting on fitness to practice law [291]
Rule 8.1(b)	Fail to disclose fact necessary to correct a misapprehension or knowingly fail to respond to lawful demand for information [240]
Rule 1.1	Competence [188]
Rule 8.4(c)	Conduct involving dishonesty, fraud, deceit or misrepresentation [167]
Rule 8.4(a)	Violate or attempt to violate a Rule of Professional Conduct or assist or induce another to do so [144]
Rule 8.4(d)	Conduct prejudicial to the administration of justice [135]
Rule 1.15	Safeguarding client or third party property [135]
Rule 1.16	Declining or terminating representation and failing to refund unearned fee [133]
Rule 1.5	Fees [118]
Rule 8.4(b)	Criminal act reflecting on lawyer's honesty, fraud, deceit, or misrepresentation [82]

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Rule 1.7	Basic conflict rule [48]
Rule 5.5	Unauthorized practice [39]
Rule 5.3	Responsibilities regarding non-lawyer assistants [38]
Rule 3.4	Fairness to Opposing Party and Counsel [31]
Rule 4.1	Truthfulness in statements to others [29]
Rule 7.3	Direct Contact with Prospective Clients [25]
Rule 3.1	Meritorious claims or contentions [22]
Rule 1.9	Former client conflict rule [19]
Rule 3.3	Candor toward the tribunal [19]
Rule 1.2	Scope of representation [17]
Rule 7.1	Communications concerning a lawyer's services [15]
Rule 4.2	Communicate with person represented by counsel [14]
Rule 5.1	Responsibilities of a Partner or Supervisory Lawyer [13]
Rule 3.2	Failure to expedite litigation [11]
Rule 1.8(h)	Entering into agreement prospectively limiting the lawyer's liability [11]
Rule 7.2	Advertising [11]
Rule 1.6	Confidentiality [11]
Rule 1.8(a)	Acquire ownership, possessory, security or other pecuniary interest [10]

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Rule 2(e)	<u>(Alabama Rules of Disciplinary Procedure)</u> Grounds for discipline [9]
Rule 3.6	Trial publicity [8]
Rule 7.4	False and misleading advertising [8]
Rule 4.4	Respect for rights of third persons [7]
Rule 8.1(a)	Knowingly make a false statement of material fact [7]
Rule 3.10	Threatening criminal prosecution to gain an advantage in a civil matter [7]
Rule 4.3	Dealing with unrepresented party [7]
Rule 3.5(c)	Conduct intended to disrupt a tribunal [6]
Rule 1.8(g)	Shall not participate in making aggregate settlement unless each client consents [5]
Rule 5.4(a)	Sharing fee with a non-lawyer [4]
Rule 1.10(a)	Imputed Disqualification [4]
Rule 7.5	Firm Names and Letterheads [4]
Rule 8.2	Judicial and Legal Officials [2]
Rule 1.8(j)	Acquiring proprietary interest [2]
Rule 3.4(a)	Unlawfully obstruct another party's access to evidence or unlawfully alter, destroy, or conceal a document or other material having potential evidentiary value [2]

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- Rule 5.4(a)**      **Sharing fee with a non-lawyer [2]**
- Rule 1.10(a)**    **Imputed Disqualification [2]**
- Rule 5.6**        **Restrictions on Right to Practice [2]**
- Rule 8.4(e)**     **State or imply an ability to influence improperly a government agency or official [1]**
- Rule 1.8(c)**     **A lawyer shall not prepare an instrument giving the lawyer or a person related to the lawyer any substantial gift from a client, including a testamentary gift, except where the client is related to the donee [1]**
- Rule 3.8**        **Special responsibilities of a prosecutor [1]**
- Rule 2.1**        **A lawyer shall exercise independent professional judgment and render candid advice [1]**
- Rule 3.5(b)**     **A lawyer shall not communicate ex parte with such a person except as permitted by law [1]**
- Rule 1.8(e)**     **A lawyer shall not provide financial assistance to a client [1]**
- Rule 1.8(k)**     **In no event shall a lawyer represent both parties in a divorce or domestic relations proceeding, or in matters involving custody of children, alimony or child support, whether or not contested [1]**
- Rule 7.6**        **A lawyer shall not cause or permit a business card of a nonlawyer which contains the lawyer's or firm's name to contain a false or misleading statement or omission to the effect that the nonlawyer is a lawyer [1]**
- Rule 5.2**        **Responsibilities of a subordinate lawyer [1]**

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Most Violated Rules of Professional Conduct September 1992 - December 2008									
Rank	Rule	Count	Percentage	Count	Percentage	Count	Percentage	Count	Percentage
1	1.3	636	18.62%	539	18.93%	502	18.84%	460	18.74%
2	1.4	518	15.90%	458	16.08%	421	15.88%	377	15.18%
3	8.4(a)	281	8.93%	259	9.10%	238	8.90%	197	8.45%
4	8.1(b)	240	7.37%	215	7.85%	204	7.70%	177	7.00%
5	1.1	188	5.77%	169	5.94%	159	6.00%	146	6.27%
6	8.4(c)	167	5.13%	144	5.08%	133	5.02%	112	4.81%
7	1.12	135	4.14%	121	4.25%	118	4.38%	105	4.51%
8	1.10	133	4.08%	120	4.21%	112	4.22%	92	3.95%
9	8.4(a)	144	4.42%	120	4.21%	110	4.15%	87	3.73%
10	8.4(c)	135	4.14%	116	4.07%	113	4.26%	94	4.03%
11	1.5	118	3.82%	103	3.92%	99	3.73%	87	3.73%
12	8.4(b)	82	2.52%	76	2.87%	70	2.64%	62	2.66%
13	5.5	39	1.20%	38	1.33%	38	1.43%	30	1.23%
14	1.7	48	1.47%	38	1.26%	32	1.21%	25	1.07%
15	5.3	38	1.17%	34	1.19%	33	1.24%	30	1.29%
16	3.4	31	0.95%	28	0.91%	22	0.83%	19	0.82%
17	4.1	29	0.89%	24	0.84%	22	0.83%	22	0.94%
18	3.1	22	0.68%	19	0.67%	19	0.72%	18	0.77%
19	7.3	25	0.77%	19	0.67%	13	0.57%	13	0.56%
20	1.9	19	0.58%	14	0.49%	13	0.49%	13	0.58%
21	3.3	19	0.58%	14	0.49%	13	0.49%	12	0.52%
22	1.2	17	0.52%	13	0.48%	12	0.45%	9	0.39%
23	7.1	15	0.46%	13	0.48%	11	0.41%	11	0.47%
24	4.2	14	0.43%	13	0.48%	11	0.41%	11	0.47%
25	5.1	13	0.40%	12	0.42%	10	0.38%	8	0.34%
26	3.2	11	0.34%	11	0.39%	9	0.34%	8	0.34%
27	1.8(b)	11	0.34%	10	0.35%	10	0.38%	8	0.34%
28	7.2	11	0.34%	9	0.32%	8	0.34%	9	0.39%
29	1.8	11	0.34%	9	0.32%	8	0.30%	8	0.26%
30	1.8(a)	10	0.31%	9	0.32%	8	0.30%	6	0.26%
31	2(e)	9	0.28%	8	0.28%	8	0.30%	8	0.34%
32	7.4	8	0.25%	7	0.25%	7	0.26%	7	0.30%
33	4.4	7	0.21%	7	0.25%	7	0.26%	6	0.26%
34	3.6	8	0.25%	7	0.25%	7	0.26%	6	0.26%
35	8.1(a)	7	0.21%	6	0.23%	5	0.19%	4	0.17%
36	3.10	7	0.21%	6	0.21%	4	0.15%	4	0.17%
37	4.3	7	0.21%	6	0.21%	6	0.23%	6	0.26%
38	3.5(c)	7	0.21%	6	0.21%	6	0.23%	6	0.26%
39	1.8(g)	6	0.18%	6	0.21%	6	0.23%	6	0.26%
40	6.2	5	0.15%	5	0.18%	5	0.19%	5	0.21%
41	1.8(i)	2	0.06%	2	0.07%	2	0.08%	2	0.08%
42	3.4(a)	2	0.06%	2	0.07%	2	0.08%	2	0.08%
43	7.5	4	0.12%	2	0.07%	2	0.08%	2	0.08%
44	5.4(b)	6	0.18%	2	0.07%	2	0.08%	2	0.08%
45	1.10(a)	3	0.18%	2	0.07%	1	0.04%	2	0.08%
46	8.4(e)	0	0.00%	1	0.04%	1	0.04%	1	0.04%
47	5.8	2	0.06%	1	0.04%	1	0.04%	1	0.04%
48	1.8(c)	0	0.00%	1	0.04%	0	0.00%	0	0.00%
49	3.8	0	0.00%	1	0.04%	1	0.04%	1	0.04%
50	2.1	0	0.00%	1	0.04%	1	0.04%	1	0.04%
51	3.5(b)	0	0.00%	1	0.04%	1	0.04%	1	0.04%
52	1.8(a)	0	0.00%	1	0.04%	1	0.04%	1	0.04%
53	1.8(k)	0	0.00%	1	0.04%	1	0.04%	1	0.04%
54	7.6	0	0.00%	1	0.04%	1	0.04%	1	0.04%
55	5.2	0	0.00%	1	0.04%	0	0.00%	0	0.00%

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