

PRMG New Lawyer Advertising Rules Summary

After months of uncertainty and debate, the New York State Office of Court Administration has adopted new rules regarding attorney advertising. The new rules, effective February 1, 2007, are different from the changes proposed in Summer 2006. The changes are in response to hundreds of comments from New York attorneys and constitutional concerns raised by the Federal Trade Commission.

The new rules clearly define what is and isn't acceptable for attorney advertising. The rules defend the dignity of the profession by establishing clear guidelines. The new rules favor attorneys who wish to build their practice through responsible advertising. At PRMG, we have always been committed to those principles. The commercials and websites we have created are already substantially compliant and with the addition of new disclaimers will be fully compliant.

Some of the key differences between the proposed and the approved rules are outline below. The complete rules are available at www.theprmg.com.

Summary of Section 1200.1 Definitions

The new rules define advertisement as communications primarily designed to attract new clients. Under the new rules, communication to existing clients or other lawyers is not considered advertising.

Summary of Section 1200.6

Under the 2006 proposed rules, advertising needed to be "informational" and raise public awareness of issues requiring legal representation. Actors, celebrities and re-enactments would not be permitted in any legal advertising. Under the adopted rules, re-enactments, actors and celebrity endorsements are permitted if clearly disclosed. Clients may appear in advertisements if there are no pending matters involving the attorney. The hard to define "informational" provision has been deleted. The use of nicknames, monikers, motto or trade names is not permitted as it implies special abilities to get results. Additionally, advertising must be relevant to the selection of counsel and cannot focus on gimmicks to attract clients. As in the original draft, attorneys will have to retain copies of their advertisements for three years, but email and website solicitations for only one year.

Summary of Section 1200.7

This section relates to written materials, including websites. Under the new rules, attorneys may use a domain name that doesn't include the name of the lawyer or law firm if the name of the lawyer or firm is clearly and conspicuously included on all pages of the website. The domain name cannot imply an ability to obtain results. The use of a telephone number based on a domain name, nickname, moniker or motto is permitted if it doesn't violate a disciplinary rule.

Key Provisions of New Attorney Advertising Rules

An advertisement shall not include an endorsement or testimonial from a client with respect to a matter that is still pending.

If an advertisement includes a paid endorsement or testimonial, it must disclose that the person is being compensated.

An advertisement shall not include the portrayal of a judge.

An advertisement may use actors or depictions of fictionalized events provided that such is disclosed.

Advertisements shall not be made to resemble legal documents.

An advertisement shall not use a nickname, moniker, motto or trade name that implies an ability to obtain results.

An advertisement may contain statements that are reasonably likely to create an expectation of results, a comparison of the lawyers services to other lawyers, testimonials of current or former clients (provided that the matter is not pending), or statements describing the quality of a lawyer's services, provided that:
It can be factually supported at the date of dissemination.
Is accompanied by the disclaimer: "Prior results do not guarantee a similar outcome."

Every advertisement other than those appearing in a radio or television advertisement, or in a directory, newspaper, magazine or other periodical, shall be labeled "Attorney Advertising" on the first page or home page. If in a brochure or postcard, it shall appear therein. If e-mail, "ATTORNEY ADVERTISING" shall appear in the subject line.

A lawyer or law firm shall not utilize a pop up or pop under advertisement on a web site or other computer-accessed communication.

A lawyer or law firm shall not utilize meta tags or hidden computer codes that if displayed would violate a disciplinary rule.

Advertisements shall be pre-approved by the lawyer or firm and shall be retained for three years following dissemination. E-mails and other computer-accessed communication shall be retained for not less than one year. Web sites must retained for one year from the time of publication, re-design, or extensive content change. The rules also appear to require that even in the event no changes are made, a copy shall be made at least once every 90 days and retained for one year.

A lawyer or law firm may utilize a domain name that does not contain the name of the lawyer or firm provided that:
the all pages of the site clearly and conspicuously include the actual name of the lawyer or law firm.
the lawyer or firm does not attempt to engage in practice using the domain name.
the domain name does not imply an ability to get results

A lawyer or firm may utilize a telephone number which contains a domain name nickname, moniker or motto that does not otherwise violate a disciplinary rule.

***This excerpted summary is for informational purposes. Attorneys should consult the full text of the rules for all applicable rules and details.**