



**ATTORNEYS' ADVERTISING COMMISSION
REGULATIONS**

pursuant to SCR 3.130-7.03(5)(a)

As approved by the KBA Board of Governors, January 16, 2009



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Publisher's Note:

Supreme Court Rule SCR 3.130 contains the Kentucky Rules of Professional Conduct (KRPC) which include lawyer advertising rules. KRPC 7.03 establishes an Attorneys' Advertising Commission (Commission) which has general responsibilities for implementing the lawyer advertising rules. In discharging its responsibilities, the Commission is given the authority to issue and promulgate regulations subject to prior approval by the Board of Governors.

AAC Regulation No. 1:

FALSE, DECEPTIVE AND MISLEADING ADVERTISING

A. Authority, Purpose and Scope

1. SCR 3.130-7.03(5) provides in part that the Attorneys' Advertising Commission [identified throughout these regulations as "the Commission"] has general responsibility for the implementation of Rule 7 of the Kentucky Rules of Professional Conduct (SCR 3.130-7.01 et seq.). SCR 3.130-7.03(5)(a) provides, further, that the Commission may issue and promulgate regulations to discharge its responsibility. This Regulation implements SCR 3.130-7.15, prohibiting false, deceptive or misleading communications, pursuant to the authority conferred upon the Commission in SCR 3.130-7.03(5).
2. This Regulation, No. 1, identifies certain types of content that may render an advertisement false, deceptive or misleading within the meaning and intent of SCR 3.130-7.15. However, this Regulation is not intended to be an exhaustive listing of all ways in which an advertisement may be false, deceptive or misleading for purposes of SCR 3.130-7.15. Accordingly, this Regulation will not be construed as limiting the power of the Commission under SCR 3.130-7.15 to determine that a particular advertisement is false, deceptive or misleading for reasons not specified in this Regulation. Further, it is not

designed in any way to limit the authority of the Inquiry Commission with regard to any of the Rules of Professional Conduct.

3. This Regulation, No. 1, applies only to communications by or on behalf of a lawyer or law firm that concern legal services available from the lawyer or firm and:
 - a. are disseminated over electronic broadcast media, including television and radio advertisements;
 - b. are published in public print media, including advertisements in newspapers, billboards, magazines and telephone directories;
 - c. appear in any print or electronic publication disseminated by a third party, unless the third party is not controlled by the lawyer and for which distribution the lawyer pays no consideration, including advertisements that appear in programs for public events or in newsletters, directories or other publications of civic organizations, charitable entities and educational institutions;
 - d. are accessible to the public on the Internet, including home pages and World Wide Web sites;
 - e. are issued as unsolicited electronic mail (e-mail”) communications to one or more persons with whom the lawyer or firm has not family relationship or prior professional relationship;
 - f. are contained in newsletters, brochures, pamphlets or other printed materials provided to prospective clients; or
 - g. constitute solicitation of professional employment from a prospective client within the scope of SCR 3.130-7.09.

B. Advertising That Constitutes a Material Misrepresentation of Fact or Law Under SCR 3.130-7.15(1)(a)

SCR 3.130-7.15(1)(a) provides in part that a communication about legal services is false, deceptive or misleading if it contains a material misrepresentation of fact or law. The Commission may consider an advertisement to be in violation of this Rule, if the advertisement:

1. contains any material misrepresentation regarding the nature of the services offered in the advertisement or the restrictions imposed upon those services by the Rules of the Supreme Court of Kentucky;

2. contains any material misrepresentation of fact regarding a lawyer's educational background, employment history, professional experience or other credentials;
3. contains any material misrepresentation of fact regarding a law firms' collective experience in a field of practice;
4. contains any material misrepresentation of fact regarding the identity of the lawyer(s) who will actually perform the legal services or the location of the office where the services will be performed;
5. includes an appearance by a non-lawyer in a manner that suggests or implies that he or she is a lawyer under circumstances where such appearance constitutes a material misrepresentation;
6. includes an appearance by an actor in a manner that suggests or implies that he or she is an actual client of the advertising lawyer or law firm, under circumstances in which such an appearance constitutes a material misrepresentation;
7. displays any "prop" (including any motor vehicle, product or other tangible item not actually involved in a legal matter) in a manner that suggests or implies that it was actually involved in a particular legal matter, where such display results in a material misrepresentation.

C. Information That Must Be Included in an Advertisement to Avoid a Misleading Omission Under SCR 3.130-7.15(1)(a)

SCR 3.130-7.15(1)(a) provides in part that a communication about legal services is false, deceptive or misleading if it omits a fact necessary to make the communications as a whole not materially misleading. The Commission may deem an advertisement in violation of this Rule, if the advertisement fails to include any information required by this Part C.

1. Office Location; telephone number.

- a. For the purposes of this section, a bona fide office is a physical location maintained by the lawyer or law firm where the lawyer or law firm reasonable expects to furnish legal services in a substantial way on a regular and continuing basis.
- b. Every advertisement must identify, by city, town or county, one or more bona fide office locations of the Kentucky lawyer(s) who will actually perform the services advertised, or in the event that the lawyer does not maintain a bona fide office, such fact shall be disclosed.

- c. An advertisement must not include a telephone number in a manner that misrepresents the geographic location of the office where the advertised legal services will be performed. If an advertisement includes a telephone number with an area code for a geographic region in which the lawyer or law firm does not maintain a bona fide office, the advertisement must include a statement that the lawyer or firm does not maintain an office within the area code indicated by the telephone number. In the event of the use of a toll free number, the advertisement must indicate the location of the bona fide office(s) where a substantial amount of the services will be performed.
- d. The information referred to in (a) and (b) is not required on advertisements by group pre-paid legal plans or non-profit legal services agencies that utilize an intake or “hot-line” number for the purpose of screening, referral or giving limited legal advice; provided however, that the advertisement must otherwise comply with the Supreme Court Rules and these regulation, including the requirement of SCR 3.130-7.20(3) that a Kentucky lawyer, or lawyer otherwise admitted as provided in SCR 2.112, be listed.

2. *Fair disclosure of legal requirements.*

- a. Any advertisement that refers to the recover of money must include an appropriate explanation of the legal requirements for such recovery. Failure to include that information in an appropriate and prominent manner may be considered a misleading omission.
- b. Any advertisement that refers to the defense of a claim for the recovery of money must include an appropriate explanation of the legal requirements for such defense. Failure to include that information in an appropriate and prominent manner may be considered a misleading omission.

D. Advertising That Creates Unjustified Expectations or Makes Unsubstantiated Comparisons Under SCR 3.1.0-7.15(1)(b) and (c)

SCR 3.130-7.15(1)(b) and (c) provide that a communication about legal services is false, deceptive or misleading: if the communication is likely to create an unjustified expectation about results the lawyer can achieve; if the communication states or implies that the lawyer can achieve results by means that violate the Rules of Professional Conduct or other law; or if the communication compares the lawyer’s services with other lawyers’ services, unless the comparison can be factually substantiated.

The Commission may deem an advertisement in violation of SCR 3.130-7.15(1)(b) and (c) if the advertisement fails to comply with this Part D.

1. ***Testimonials.*** A testimonial is a statement by any person regarding the quality of legal services rendered by an advertising lawyer or law firm. Testimonials concerning the quality of legal services or the client's level of satisfaction that are stated in general terms and that do not make reference to a particular legal matter will ordinarily not be considered to create unjustified expectations. Testimonials are also subject to the requirements of subsection (D)(2) below.
2. ***Advertising that refers to particular matters or results.*** Statements that may create unjustified expectations include advertisement concerning results obtained on behalf of a client, such as the amount of damage award, cumulative verdicts or the lawyer's record in obtaining favorable verdicts unless the advertisement includes the specific factual and legal circumstances of the case. Such information might include some or all of the following: the facts underlying the representation, a statement of the applicable law, whether a matter has been concluded or continues on appeal, and a statement concerning any subsequent post-verdict settlement of the matter.
3. ***Class Action Information.*** Statements referring to the dollar amount of a judgment, verdict or settlement in any particular legal matter, are not in violation of SCR 3.130-7.15 if the reason for making such a statement is to disseminate information regarding a judgment, verdict or settlement in a class action for the purpose of notifying persons who may have a right to participate in the proceeds thereof.
4. ***Advertising that claims or implies a unique level of prior success.***
 - a. An advertisement should not state or imply that the advertising lawyer or law firm has been more successful than other lawyers or firms in obtaining satisfactory results for clients, unless the statement or implication is factually substantiated by information provided to the Commission by the advertising lawyer or law firm. In determining whether the statement or implication about prior success is factually substantiated, the Commission will consider all relevant factors. Factors that indicate that an advertisement does not violate this provision include:
 - (1) A showing that the statement or implication about prior success refers to an identifiable area of legal practice in which the lawyer's or firm's actual level of success can be accurately assessed; and
 - (2) A showing that the statement or implication about prior success is supported by objective information and a statistically meaningful volume of data, as distinguished from information that is subjective or anecdotal in nature.

b. The following types of content do not constitute statements or implications about prior success within the meaning and intent of this regulation:

(1) Communications regarding fields of practice that conform to the requirements of SCR 3.130-7.40;

(2) Factual information regarding a lawyer's or law firm's experience in legal matters in a particular field of law, as distinguished from statements or implications regarding the lawyer's or firm's level of success in those matters.

5. *Advertising that suggests a likelihood of satisfactory results irrespective of the merits of the particular matter.* An advertisement should not state or imply that the advertising lawyer or law firm will be able to obtain satisfactory results for a client regardless of the actual merits of the client's particular legal matter. In determining whether an advertisement violates this provision, the Commission will consider all relevant factors, including any information submitted to the Commission by the advertising lawyer or law firm. An advertisement may violate this Regulation if it includes content that states, implies or suggests that potentially adverse parties or lawyers will be more likely to cooperate in resolving the client's legal matter favorably to the client because the client is represented by the advertising lawyer or law firm unless the statement or implication is factually substantiated by information provided to the Commission by the advertising lawyer or law firm.

AAC Regulation No. 2:

PERMISSIBLE CONTENT OF ADVERTISEMENTS SUBMITTED WITHOUT A FEE

Pursuant to SCR 3.130-7.05(1)(a)(26) the Commission may specify additional information that may be contained in advertisements that are permitted to be submitted without a fee. The following additional information may be included in any of these advertisements:

1. Participation by the lawyer in community groups or clubs and nonprofit charitable organizations or groups, either as a member or officer;
2. Previous employment positions, including governmental and non-governmental employment;
3. Enlargements of business cards that are not themselves advertisements under SCR 3.130-7.02(1)(a), but if the advertisement includes reference to a website, the website is considered a separate advertisement;

4. Listings of immediate family, such as spouses, children and parents;
5. Information identifying the offices of the firm in several jurisdictions or cities within or without the Commonwealth of Kentucky;
6. The length of time any particular law firm or lawyer has been in practice;
7. The types of information listed in SCR 3.130-7.05(1)(a)(6-13) may include both past and present participation or status, if the advertisement discloses, when necessary, that the lawyer is no longer a participant or no longer holds that status;
8. A photograph of the lawyer with no accompanying scene in the background of the photograph;
9. Words such as “congratulations” or “good luck,” when used in program advertisements for charitable or education functions;
10. The designation of a law firm as “A debt relief agency” as required by the Bankruptcy Abuse Prevention and Consumer Protection Act [11 USC§528(b)(1)(a)(b)];
11. The website address of a lawyer or law firm’s website advertisement, if the website has been submitted and approved as required by SCR 3.130(7.05);
12. Such variations on the items contained herein and in SCR 3.130-7.05(1)(a)(1-25) that are minor or technical in nature and may be reviewed and approved by the designee of the Commission named herein;
13. Additions or revisions to a previously submitted and approved advertisement, as required by SCR 3.130-7.05(2), need not be re-submitted to the Commission if the new addition or revision is limited to the items listed in SCR 3.130-7.05(1)(a)(1-26) and AAC Regulation 2.

AAC Regulation No. 3:

**COMMUNICATIONS THAT REQUIRE THE DISCLAIMER
“THIS IS AN ADVERTISEMENT”**

Note to Reader: This regulation will be superseded by amendments to SCR 3.130-7.09 and SCR 3.130-7.25, effective July 15, 2009.

SCR 3.130-7.09(3) requires that certain types of advertisements contain the disclaimer “THIS IS AN ADVERTISEMENT.” In addition, SCR 3.130-7.25 authorizes the Commission to require the disclaimer “THIS IS AN ADVERTISEMENT.” This

Regulation No. 3 clarifies the relationship between SCR 3.130-7.09(3) and SCR 3.130-7.25.

1. SCR 3.130-7.09(3) does not apply to every written, recorded or electronic communication from a lawyer, including emails. Rather, it applies only to any such communication that solicits “professional employment from a prospective client known or reasonably believed to be in need of legal services in a particular matter, and with whom the lawyer has no family or prior professional relationship.” The term “particular matter” includes any identifiable type or category of legal matters as well as any specific case of that consumer. An advertisement that is within the scope of SCR 3.130-7.09(3) must include the disclaimer “THIS IS AN ADVERTISEMENT.”
2. Even if an advertisement does not constitute a solicitation of professional employment within the scope of SCR 3.130-7.09, the Commission may require the disclaimer “THIS IS AN ADVERTISEMENT.” Pursuant to SCR 3.130-7.25, if the Commission concludes that the advertisement may not be perceived by the consumer as a quest for clients because of its format, manner of presentation or medium.

AAC Regulation No. 4:

DELEGATION OF ADMINISTRATIVE TASKS

Supreme Court Rule 3.130-7.03 provides that the Commission may delegate to an employee of the KBA the authority to review advertisements submitted under SCR 3.130-7.05(2). The Commission hereby delegates this function to the advertising paralegal, with the supervision of the Office of Bar Counsel and the Director, to review such submissions in the limited circumstances as follows:

1. The Commission has determined the advertisement to be noncompliant and the lawyer is making a resubmission to bring the advertisement into compliance;
2. If a submission is determined to have been made without the proper fee then the KBA would be authorized, through its designee, to inform the attorney that the submission does not qualify without a fee, or that the amount of the fee is incorrect, and should be submitted under SCR 3.130-7.05(2) with the proper fee to the Commission;
3. Advertisements submitted for review which, on their face, comply with the rules and regulations of the Commission and contain no issues requiring the individual attention of the Commission;

4. If its designee determines a question exists concerning compliance with these regulations or the Supreme Court rules that require the Commission's review, the advertisement may be submitted to the Commission by the designee.

AAC Regulation No. 5:

TIME PERIOD FOR REVIEW WITH ADVISORY OPINION FOR BROADCAST MEDIA

1. SCR 3.130-7.06(1) allows the Commission a period of thirty days to consider an advertisement submitted for an Advisory opinion. The thirty-day period runs from the date of submission of the advertisement, transcript and fees. If a transcript is presented without three copies of the video or audio tape, the Commission will attempt to review and respond to the submission within thirty days, but the thirty day period set forth in SCR 3.130-7.06 will not begin to run and an Advisory opinion will not be provided regarding the advertisement until three copies of the video, digital image or audiotape advertisement are provided for review.
2. If the Commission approves a transcript subject to a review of the video or digital media, the thirty-day time period set forth in SCR 3.130-7.06(1) will commence upon the Commission's receipt of the three copies of the video or digital media.

AAC Regulation No. 6:

REQUEST FOR HEARING; INFORMAL RESOLUTION PROCEDURE

Deleted.

AAC Regulation No. 7:

HEARING PROCEDURE

Deleted.

AAC Regulation No. 8:

TIME FOR FILING APPEAL

Deleted.

**AAC Regulation No. 9:
PUBLICATION OF REGULATIONS**

The Commission will provide copies of these regulations upon request to any attorney or member of the public.

**AAC Regulation No. 10:
COPYING AND RETRIEVAL CHARGES**

SCR. 3.130-7.08 permits the records of the Commission to be inspected and copied. The Kentucky Bar Association may charge a reasonable fee for copies of any Commission records that are requested, not to exceed \$.50 per page. It may also charge a search fee of \$25.00 per hour for staff time spent responding to requests for inspection of records or making copies in the event its designee determines such is appropriate given the time required for the assembly or copying of the records.

**AAC Regulation No. 11:
REQUIREMENT FOR COMPLETE INFORMATION**

In submitting an advertisement the lawyer or law firm must provide sufficient information to the Commission with the submission to enable the Commission to review the advertisement, and must respond to any requests for additional information that the Commission deems necessary to the review of the advertisement.

**AAC Regulation No. 12:
OTHER PROCEEDINGS**

Proceedings before the Commission do not preclude or preempt other proceedings before the Court or any of its agencies as authorized in the Supreme Court Rules.

AAC Regulation No. 13:

(Reserved)

**AAC Regulation No. 14:
ADVERTISING OF FEES**

The Supreme Court Rules and the Attorney Advertising Regulations require specific information regarding fees, as well as information about services to be provided, in

certain attorney advertisements. Supreme Court Rules 3.130-7.04 and SCR 3.130-7.15 establish what minimum information is required in advertisements which reference attorney fees.

If the advertisement uses any language to imply or state that there will be no fee owed unless there is a recovery, as is typical in contingent fee advertisements, then the advertiser must include language identifying whether the attorney or the client is responsible for court costs and/or case expenses. It may be deceptive, and therefore may be in violation of SCR 3.130-7.15, to employ advertising that refers to contingent fee arrangements without addressing the client's liability for court costs and case expenses. Language similar to that provided in SCR 3.130-7.04 is adequate to explain whether or not the court costs and/or case expenses will be the responsibility of the client. AAC Regulation 1 also addresses other information that must be included in advertisements to avoid a misleading omission under SCR 3.130-7.15.

Further, if the advertisement states a contingent fee percentage or rate then the advertisement must also disclose whether percentages are computed before or after deduction of court costs and case expenses. It may be deceptive, and therefore in violation of SCR 3.130-7.15, to employ advertising that refers to a contingent fee percentage without addressing the manner in which the fee is computed.

Contingent fee percentages are allowed to be stated in advertisements not requiring a submission fee pursuant to SCR 3.130-7.05(1)(a)(22) and SCR 3.130-7.05(b)(1).

AAC Regulation No. 15:

ELECTRONIC SUBMISSION OF ADVERTISEMENTS

SCR 3.130-7.05(1)(b) states, "If the advertisement contains only those items listed in SCR 3.130-7.05(1)(a), the lawyer shall mail or deliver to the Commission, c/o the Director of the Kentucky Bar Association, three (3) copies of the advertisement.

SCR 3.130-7.05(2) states, "If the advertisement does not qualify under SCR 3.130-7.05(1) for submission without a fee, the lawyer shall mail or deliver to the Commission, c/o the Director of the Kentucky Bar Association, three (3) copies of the advertisement.

1. Advertisements containing only those items listed in SCR 3.130-7.05(1)(a) and AAC Regulation 2 for submission without a fee, may also be electronically submitted via facsimile or emailed in PDF (Portable Document Format) to the Attorneys' Advertising Commission address attorneyadvertising@kybar.org.
2. Website advertisements that do not qualify for submission without a fee may be submitted in electronic format only if on a data disc in PDF (Portable Document Format). Three (3) copies of the data disc should be mailed or delivered to the Commission, c/o the Director of the Kentucky Bar Association.

AAC Regulation No. 16:
RECORD RETENTION

SCR 3.130-7.08 states, “The records of the Commission shall be available for inspection and copying at the offices of the Kentucky Bar Association at reasonable times and upon reasonable notice.”

The availability of the records of the Commission shall be limited to two years from the date of submission of the advertisement. The Commission may destroy any records two years after submission.