

**KENTUCKY BAR ASSOCIATION
ATTORNEYS' ADVERTISING COMMISSION REGULATIONS**

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) As 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.