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Legal advertising and marketing in 2026

LAWYERS MUST BE CAUTIOUS TO AVOID FALSE, MISLEADING OR INTRUSIVE ADVERTISING PRACTICES, AND CAREFUL TO FOLLOW THE NEW RULES EFFECTIVE THIS YEAR

Attorney advertising has become ubiquitous. It is nearly impossible to escape attorney ads when using the internet, watching TV, and listening to the radio. Billboards proliferate on the roads and highways. In the aftermath of the devastating Pacific Palisades and Eaton Canyon fires, numerous attorneys have taken the opportunity to market their availability, educate consumers and potential clients regarding legal remedies, and provide legal services to those affected by the fires.

Among the efforts to communicate to those victimized by the fires, lawyers and law firms initiated traditional hardcopy mailings, social-media messaging and other electronic communications. They scheduled town-hall meetings, educational seminars, and other community events at which lawyers have been available to provide information and answer questions of

prospective clients.

But implicit in some of these activities is a potential for allegations that the lawyer has made misleading statements, engaged in intrusive communications, and/or engaged in improper real-time or in-person solicitation of clients for pecuniary gain.

Careless, misleading, or false advertising could expose attorneys to the risk of discipline by the State Bar for violation of California Rules of Professional Conduct (CRPC), rules 7.1, 7.2 or 7.3, and various provisions of the State Bar Act (Bus. & Prof. Code §§ 6000 et seq.). Avoiding the risk of disciplinary action – as well as potential monetary civil penalties – requires familiarity with the CRPC and applicable statutory and case law.

Constitutional protection for commercial free speech

Generally, attorneys may advertise their availability to provide legal services through any written, recorded, or electronic means of communication so long as such advertisements are truthful, not misleading, and not communicated in person, telephonically, or electronically in real time. Moreover, where a potential client indicates that they do not wish to be solicited, that they are already represented by counsel, or where coercion, duress, or harassment is involved, solicitation of legal employment for pecuniary gain is expressly prohibited.

Constitutional protection for truthful legal advertising and marketing has been in place for five decades. In *Virginia State Board of Pharmacy v. Virginia Citizens Consumer Council* (1976) 425 U.S. 748, 757, fn.15, the Supreme Court held that the constitutional protection afforded commercial speech is tied to the recipient's independent First Amendment interest in acquiring such information, even when that information could be obtained by other means. This protection was extended to attorney advertising in *Bates v. State Bar of Arizona* (1977) 433 U.S. 350, in which the constitutional protection for First Amendment commercial free speech was applied to attorney advertising of routine legal services.

In subsequent decisions, the high Court reiterated the fundamental holding that, despite the fact some might find attorney advertising to be distasteful or lacking in professionalism, commercial-free speech is afforded by First Amendment protection. (On the other hand, some commentators have found the holding regarding First Amendment protection for legal commercial speech to be ambiguous. (See, e.g., Harvard Law Review Note, January 2017 Repackaging Zauderer.)

New Advertising Rules for 2026

Senate Bill 37 was signed into law by Governor Newsom in 2025, and was effective January 1, 2026. Significant revisions have been made to the existing regulation of attorney advertising in the State Bar Act. Among other revisions, lawyers are prohibited from describing their skills, experience or record by the use of misleading, false or deceptive statements; lawyers may not refer to their having received recognition by or the receipt of an award from an organization, unless the recognition or award was not conditioned upon the payment of a fee, cost or other payment; and certain other information must be included in lawyer advertising, such as the disclosure of the city, town or county of at least one bona fide office location of the lawyer or law firm, or the office address listed with the State Bar.

This legislation also significantly revises the civil-enforcement procedures and the civil penalties for unwithdrawn false, deceptive or misleading advertising material. Where a lawyer has been found to have violated the advertising regulations as set forth in section 6158.4, then statutory damages in the minimum amount of \$5,000 up to a maximum of \$100,000 per "each unique advertisement" or three times the amount of actual damages may be imposed, whichever is larger, plus attorney fees, injunctive relief and other relief that the court deems proper. (See § 6157.2.)

Shapiro v. Kentucky Bar Ass'n. (1988) 486 U.S. 466, 472, established that targeted mailings sent by attorneys to prospective clients, even those advertising legal services for existing matters particular to the recipient, are protected as commercial speech under the First Amendment. Commercial speech that is not false or deceptive may be restricted only in service of a substantial governmental interest through means that directly advance that interest. Following *Shapiro*, direct written contact with individual prospective clients, properly identified as “advertising,” became an accepted practice in many jurisdictions.

In *Zauderer v. Office of Disciplinary Counsel* (1985) 471 U.S. 626, 648, the Court invalidated Ohio’s ban on the use of illustrations in attorney ads and reversed the disciplinary board’s conclusion that including a drawing of the Dalkon Shield intrauterine device in ads directed to women who may have suffered injury from that device was deceptive. The Court concluded that the ad constituted a truthful depiction that served to effectively convey information. It also found that Ohio’s asserted interest in preserving the “dignity” of the legal profession was not substantial enough to justify a prohibition on non-deceptive visual elements. Additionally, the Court invalidated the disciplinary action against Zauderer for including legal advice in the advertisement, finding that advising potential clients that it was not too late to pursue a claim constituted truthful information about legal rights that could be valuable to consumers. Therefore, prohibiting such truthful information was an unconstitutional infringement on protected commercial speech.

However, in *Florida Bar v. Went For It* (1995) 515 U.S. 618, the Supreme Court upheld a Florida restriction on legal advertising that imposed a 30-day waiting period, beginning from the date of the accident or disaster, before any lawyer may contact a potential client or family member of that client regarding representation. The Court

accepted anecdotal information presented by the Florida Bar and agreed that the restriction was constitutional, to provide protection for privacy and emotional tranquility of traumatized accident victims.

In *Leoni v. State Bar* (1985) 39 Cal.3d 609, the California Supreme Court recognized the United States legal advertising cases, including *Virginia Pharmacy Board, Zauderer, In re R.M.J.* (1982) 455 U.S. 191, and *Bates* cases, agreeing with the California State Bar’s position “that the First Amendment cases do not question the authority of the state to regulate misleading advertising.” The *Leoni* opinion quoted the U.S. Supreme Court’s observation that “[o]bviously, much commercial speech is not probably false, or even wholly false, but only deceptive or misleading. We foresee no obstacle to a state’s dealing effectively with this problem.” (*Id.*, at p. 771.) *Leoni* also includes: “Further, it has been noted that special considerations apply to advertising by lawyers because they ‘do not dispense standardized products; they render professional services of almost infinite variety and nature, with the consequent enhanced possibility for confusion and deception if they were to undertake certain kinds of advertising.’ [citing *Va. Pharmacy Board*].” This court analyzed the above quoted language in *Jacoby v. State Bar* (1977) 19 Cal.3d 359. Writing for the court, Justice Mosk explained that the *Jacoby* case “stands for the proposition that while the First Amendment values in commercial advertising remain constant regardless of the profession involved, the governmental regulatory interest may vary from profession to profession.”

Current Rules of Professional Conduct

The California Rules of Professional Conduct proscribe certain specific advertising and marketing practices. Attorneys may advertise their services through any written, recorded, or electronic means of communication, under Rule 7.2 However, Rule 7.3(a) bans in-person, live telephone, or real-time electronic contact and solicitation of clients where the lawyer’s primary motivation is their pecuniary gain. Rule 7.3(b)

expands this ban to include written, recorded, or electronic communication where the solicitation involves coercion, duress, or harassment, or the person targeted for solicitation makes it known that they do not wish to be solicited by the lawyer.

Rule 7.1(a) provides in pertinent part: “A lawyer shall not make a false or misleading communication about the lawyer or the lawyer’s services. A communication is false or misleading if it contains a material misrepresentation of fact or law, or omits a fact necessary to make the communication considered as a whole not materially misleading.”

Rule 7.2 provides in part: “(a): Subject to the requirements of rule 7.1 and 7.3, a lawyer may advertise services through any written, recorded or electronic means of communication, including public media....”

Rule 7.3 provides in part:

- (a) A lawyer shall not by in-person, live telephone or real time electronic contact solicit professional employment when a significant motive for doing so is the lawyer’s pecuniary gain, unless the person contacted:
 - (1) is a lawyer; or
 - (2) has a family, close personal, or prior professional relationship with the lawyer.
- (a) A lawyer shall not solicit professional employment by written, recorded or electronic communication or by in-person, telephone or real time electronic contact even when not otherwise prohibited by paragraph (a), if:
 - (1) the person being solicited has made known to the lawyer a desire not to be solicited by the lawyer; or
 - (2) the solicitation is transmitted in any manner which involves intrusion, coercion, duress, or harassment.
- (b) Every written, record-

ed or electronic communication from a lawyer soliciting professional employment from any person known to be in need of legal services in a particular matter shall include the word “Advertisement” or words of similar import on the outside envelope, if any, and at the beginning and ending of any recorded or electronic communication, unless the recipient of the communication is a person specified in (a)(1) or (a)(2), or unless it is apparent from the context that the communication is an advertisement....

Statutory regulations

Completely separate from and in addition to the CRPC, the California Legislature has adopted statutory restrictions and regulations governing attorney advertising, which are set forth in the State Bar Act, California Business and Professions Code sections 6000, et seq. In sections 6157 through 6158.9, many specific restrictions on legal advertising are set forth. It is presumptively misleading for

legal advertising to include messages regarding the ultimate result in any given case without providing adequate context. For example, section 6158.1 restricts depictions of certain events, such as injuries and accident scenes, messages implying specific anticipated results or monetary recoveries without also including appropriate disclaimers. Also see, section 6158.3.

Moreover, as adopted in 1994, section 6158.4 set forth a detailed procedure by which any person claiming that legal advertising violates applicable statutory requirements may file a State Bar complaint; if the State Bar concludes that “substantial evidence of a violation” exists, the advertisement must be withdrawn within a specified time. If the offending ad is not withdrawn in compliance with the statute, a civil enforcement action may be filed.

Conclusion

Notwithstanding the long-recognized constitutional protections for commercial free speech, attorney advertising and marketing remain subject to governmental oversight

and control. Attorney advertising is still criticized and disrespected by many, including members of the legal profession itself. It would behoove lawyers who engage in the publication and broadcast of advertising and marketing materials to remain educated about currently applicable ethics rules, statutory laws, and case law governing legal advertising. This is particularly true in 2026, given the changes to the various advertising regulations. Failure to do so may have dire consequences, including both professional discipline and civil penalties including monetary fines. 

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