



Making Your Pitch Perfect: *The Ethics of Attorney Marketing*

Huntton Andrews Kurth LLP
Association of Corporate Counsel – National Capital Region
October 19, 2023
3:00-5:00 pm (eastern)

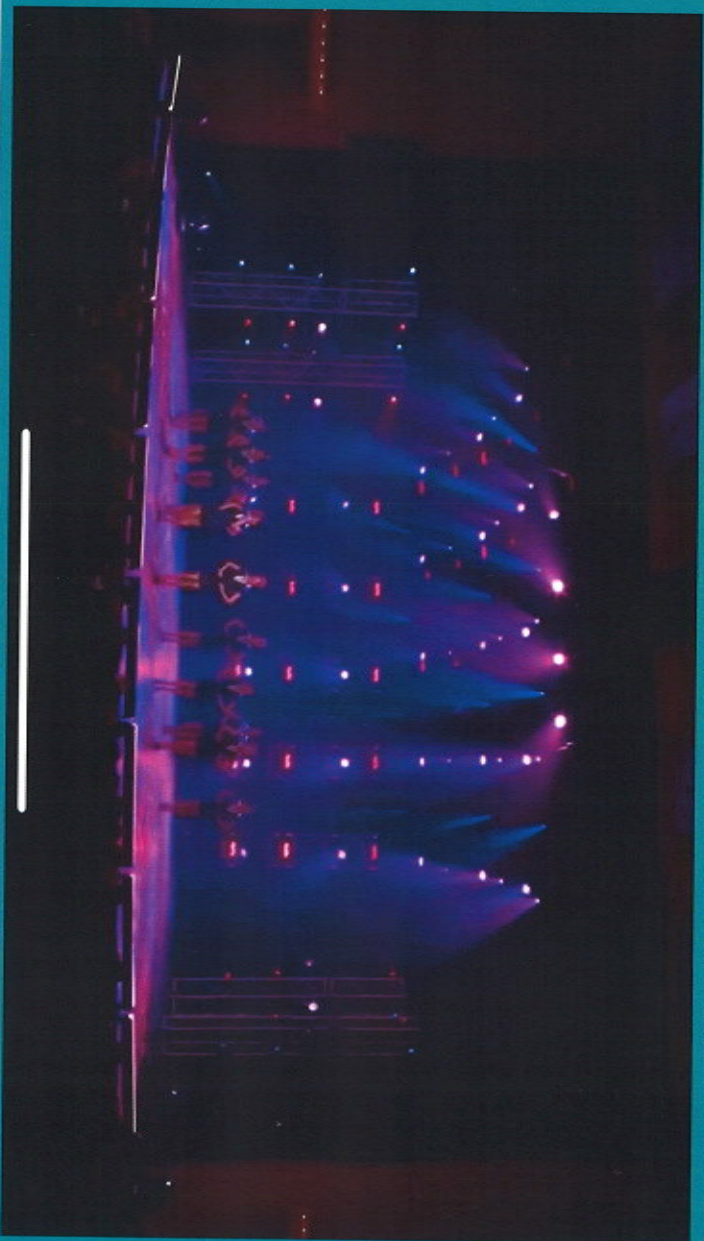
Your maestros:

Madeline Culbreth, Kelly Faglioni, Tyler Grant, Christian Pugaczewski, Amy McDaniel

"I saw
the sign"



Pitch Perfect
Universal Pictu



EVOLUTION OF LAWYER ADVERTISING RULES



1908 Canons of Ethics



- “Client education” + duty to make counsel available = appropriate focus
- No solicitation
- Advertising micro-managed via Model Code (retained admonitions against undignified)
- State-by-state regulation unworkable



- Unprofessional, intolerable, tradition (not client protection)



Model Bates

- Advertising OK in any medium
- Nothing false, misleading
- No solicitation unless
- Don't Pay for Referrals



Model Rules (post constitutional challenges & tech revolution)

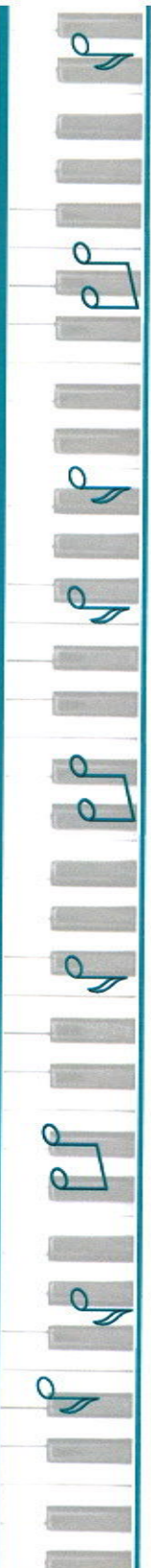


Lawyer Advertising - First Amendment

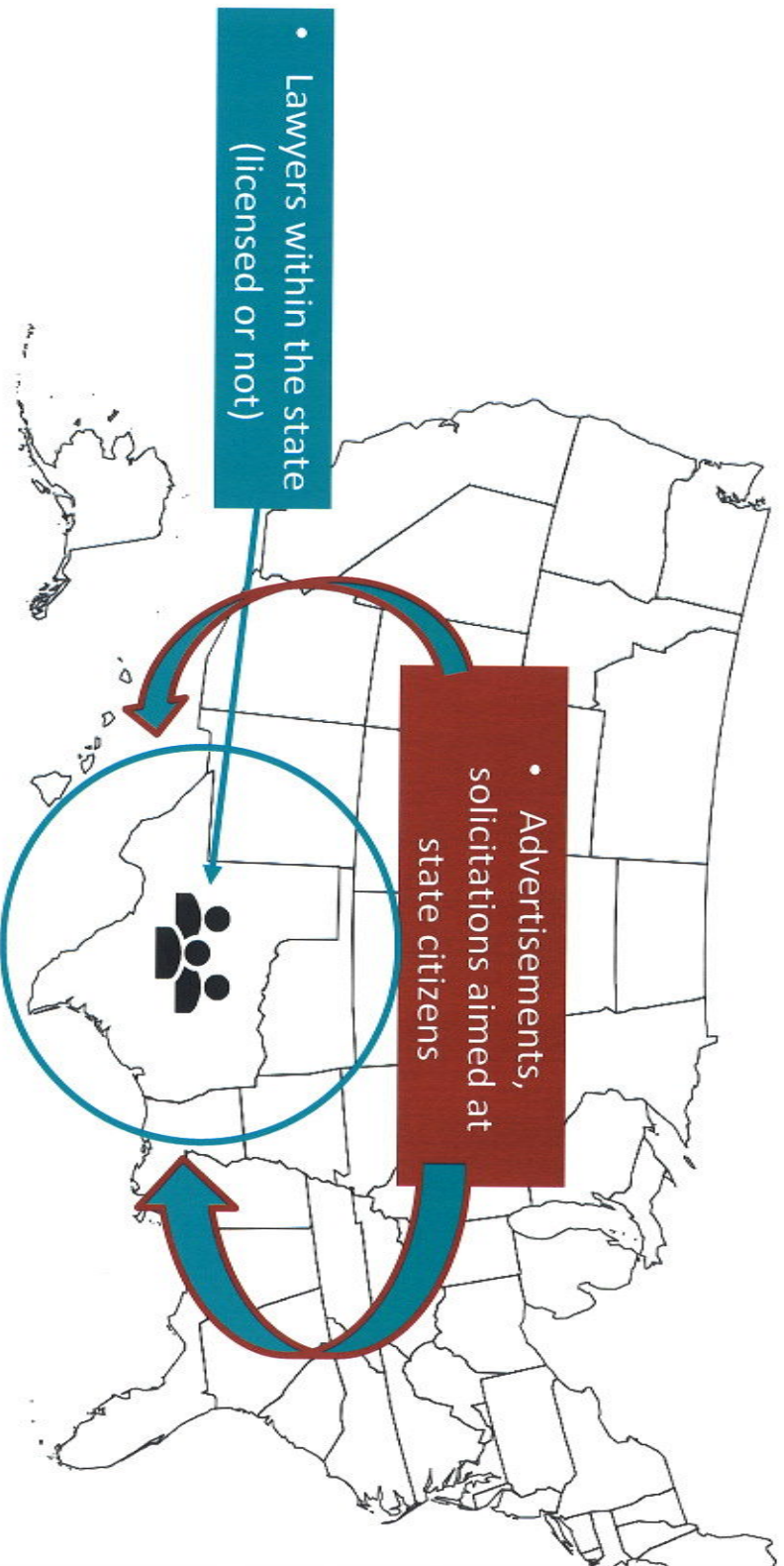
Commercial
Speech
Protected

Abrogate for
Substantial
State
Interest

Narr
Tailo



Lawyer Advertising – State Authority to Regulate





PROFESSIONAL RULES IMPORTANT TO LAWYER ADVERTISING AND

Rule 7: Information About Legal Services

Rule 1.6: Confidentiality

Rule 5.5: UPL

Rules 4.2, 4.3: Interacting
With Represented & Unrepresented

Rule 8.2: Statements About



Rule 7: Information About Legal Services

The Basic Principles

(*Substantial State Interests*)

Any Media

Do Not Pay
for
Referrals

Identify
Who Is
Responsible
for
Advertising

No
False &
Misleading

Rules 7.1, 7.2, 7.3, 7.6

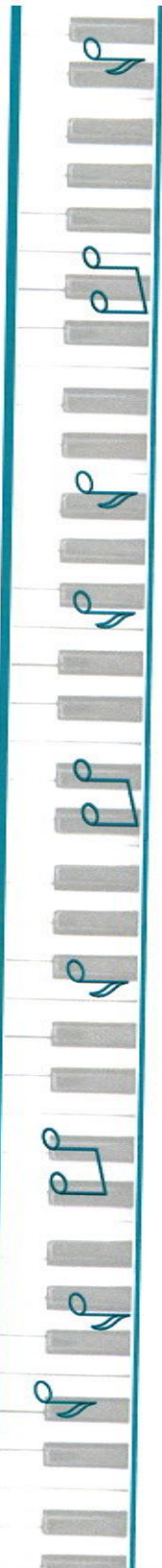
Rules 7.1,
7.2, 7.3, 7.6

Communications About Lawyer, Lawyer's Services



Referrals, Appointment

- Form of indirect solicitation? (Rules 7.1, 7.2, 7.3, 7.6)
- Independence of judgment (Rule 5.3)
- Don't do indirectly what you cannot do directly (Rule 7.1)



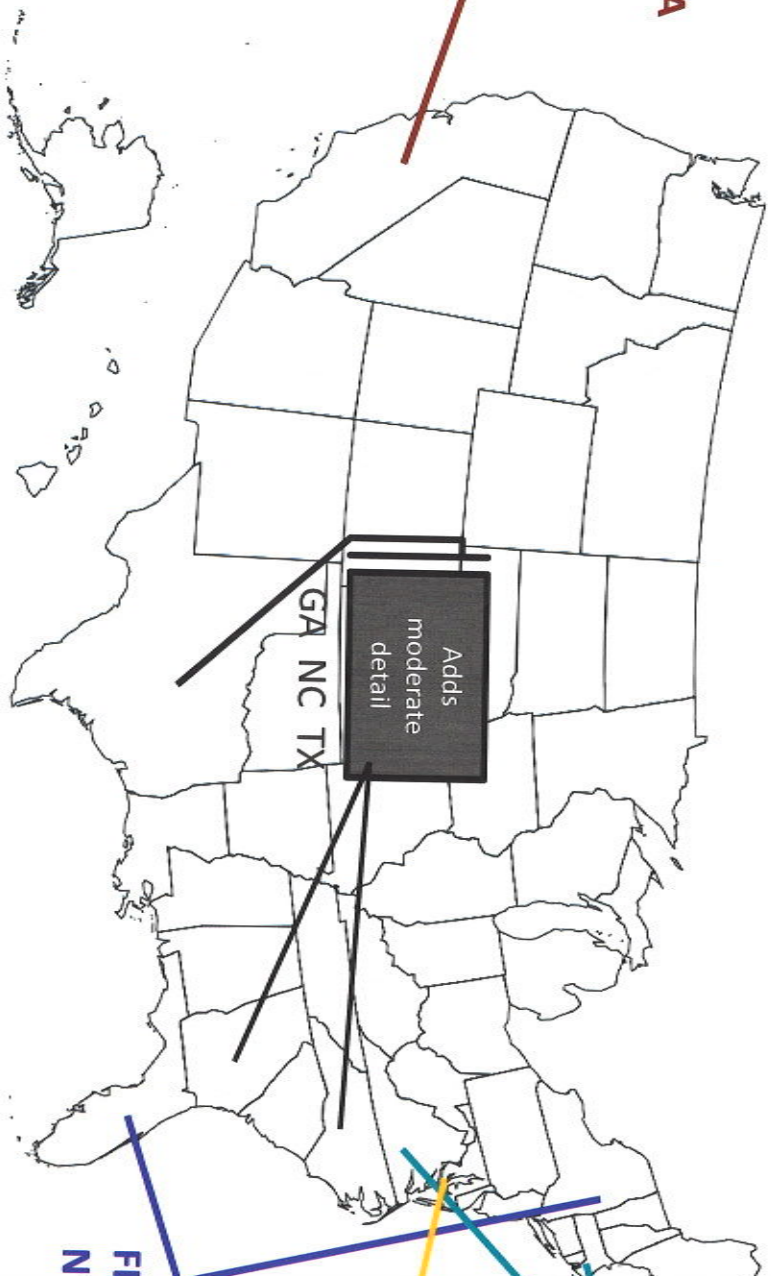
STATE VARIATION: NOTHING FALSE, MISLEADING

Can designate
presumptively
misleading

CA

Adds
moderate
detail

GA NC TX

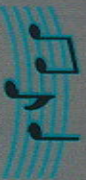


"Blame It On the Boogie"



Pitch Perfect
Universal Pictu





EXAMPLES

NO FALSE, MISLEADING COMMUNICATIONS

- Material misrepresentation of fact or law
- Omission of fact necessary to make the statement considered as a whole not materially misleading
- Guarantees, warranties, or predictions regarding the result
- Testimonials, endorsements without disclaimer
- Dramatization without disclaimer
- Assertion that cannot be substantiated
- Statements creating unjustified expectations
- Reference to past results unless objectively verifiable (or accompanied by disclaimer)
- Comparisons of lawyers unless objectively verifiable
- References to areas of practice in engaged
- Suggestion that lawyer will act unlawfully
- Falsely implying practice in association
- Unduly manipulative
- Firm name implying connection with agency, deceased lawyer not a former
- Incomplete description of fee and might owe
- Firm name including lawyer in public actively and regularly practicing with

Lawyer photoshops self into picture with celebrities and posted on lawyer's webs

0%

0%

Real?

Not Real?

Start the presentation to see live content. For screen share software, share the entire screen. Get help at polllev.com/app



LA Lawyer Photoshops Self into Photos with Celebrities Is there a material misrepresentation of fact or law?

Real



<https://6abc.com/la-lawyer-photoshop-celebrity/317223/>



REAL OR NOT REAL?

Is there a material misrepresentation of fact or law?

Although no lawyer currently at *Coastal Law Firm* had ever handled *products liability* matter, Coastal Law Firm's website, Coastal Law's

- Contained a page entitled "Consumer Protection and Products Liability Lawyer"
- Claimed that the firm has a history of winning products liability
- Claimed that firm employs products liability lawyers who understand how to deal with both corporations and insurance companies and history of winning cases for clients

Is Coastal Law Firm's website advertising products liability practice as described real?

0%

0%

Real?

Not Real?

Start the presentation to see live content. For screen share software, share the entire screen. Get help at polllev.com/app



Real

In re Wells, 709 S.E.2d 644, 646, 646-47 (S.C. 2011).

NOW ASSUME that two recently retired law firm lawyers had a significant number of products liability cases, 98% of which settled that were tried to a jury verdict in favor of the client in significant Current lawyers intend to practice products liability law and have of winning consumer protection cases against corporations.

“Firm has a history of winning products liability cases”

“Firm employs products liability lawyers who understand how to deal corporations and insurance companies and have a history of winning clients.”

Retired lawyers scenario: Misleading or Not Misleading?

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0%

Not Misleading

Misleading

Start the presentation to see live content. For screen share software, share the entire screen. Get help at polllev.com/app



Misleading or Not Misleading?

Can the firm reference experience of lawyers no longer there?

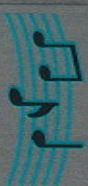
NOW ASSUME that two recently retired law firm lawyers had handled a significant number of products liability cases, 98% of which settled in favor of the client in significant Current lawyers intend to practice products liability law and have a history of winning consumer protection cases against corporations.

"Firm has a history of winning products liability cases"

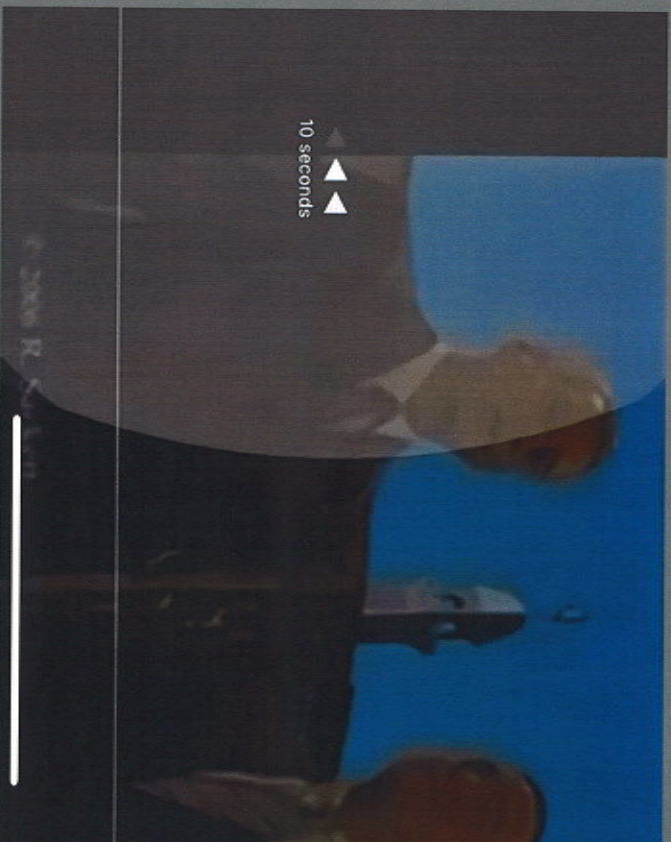
Factually True
it matter if ju
was collected

"Firm employs products liability lawyers who understand how to deal with corporations and insurance companies and have a history of winning cases against corporations."

Factually True



Gimmicks: Misleading or Not Misleading?



<https://www.youtube.com/watch?v=...>



Comparisons Can Be Misleading



- Can you substantiate?
- General Description?
- Claim About Quality?



- The City's Dopest Attorney
 - Need a Warrant Recalled?
 - Want to Smoke Pot on Probation
- All Criminal Defense, from Drugs to M

Harvard Law, Affordable

The "Dopest" Attorney Ad

0%

0%

Real

Not Real

Start the presentation to see live content. For screen share software, share the entire screen. Get help at polllev.com/app

The "Dopest" Attorney

0%

0%

Misleading

Not misleading

Start the presentation to see live content. For screen share software, share the entire screen. Get help at polllev.com/app



Comparisons



Real

The advertisement features a portrait of Allison Margolin, a woman with long dark hair, wearing a dark top. To the right of her portrait is a red banner with the text "LA'S DOPEST ATTORNEY" in white. Below this banner is a white box containing a bulleted list of services: "Need a Warrant Recalled?", "Want to Smoke Pot on Probation?", and "All Criminal Defense, from Drugs to Murder." Below the list is a yellow box with the text "Harvard Law, Affordable". At the bottom of the advertisement, the name "Allison Margolin" is written in white on a red background, followed by the phone number "Office 323-653-1850" and a small disclaimer: "(10% fee call 800-333-3333)".

Allison Margolin

LA'S DOPEST ATTORNEY

- Need a Warrant Recalled?
- Want to Smoke Pot on Probation?
- All Criminal Defense, from Drugs to Murder.

Harvard Law, Affordable

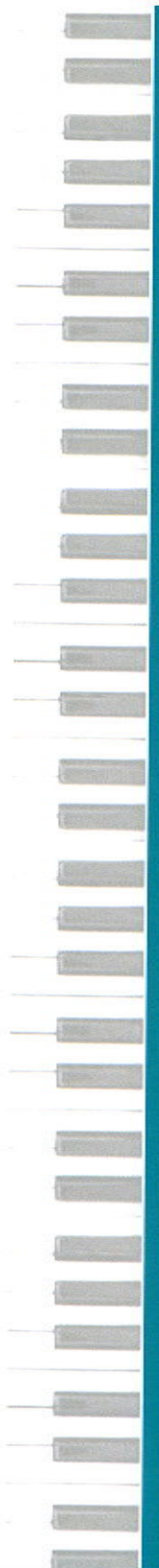
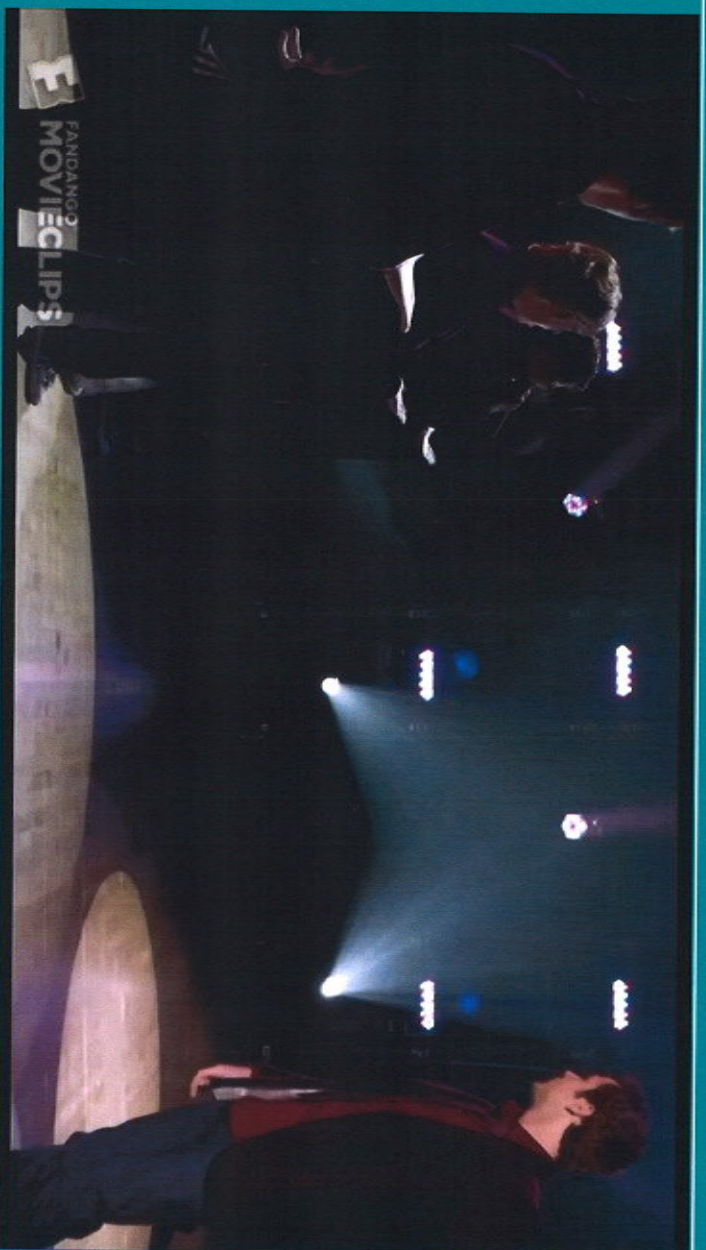
Office 323-653-1850
(10% fee call 800-333-3333)

<https://www.inboundlawmarketing.com/20-bizarro-law-firm-ads/>

"I've Got the Magic in Me"



Pitch Perfect
Universal Pictu





Unjustified Expectations?



The advertisement features a portrait of Allison Margolin, a woman with long dark hair, wearing a dark blazer over a white top. To the right of her portrait, the text "LA's DOPEST ATTORNEY" is written in large, bold, white capital letters on a red background. Below this, a list of services is provided in white text on a black background, enclosed in a red oval:

- Need a Warrant Recalled?
- Want to Smoke Pot on Probation?
- All Criminal Defense, from Drugs to Murder.

Below the list, the text "Harvard Law, Affordable" is written in black on a yellow background. At the bottom, the name "Allison Margolin" is written in white on a red background. To the right of her name, the phone number "Office: 323-653-1850" is written in white on a red background.

<https://www.inboundlawmarketing.com/20-bizarre-law-firm-ads/>



Unjustified Expectations?



- In the past, I have spoken to you about accidents. Today, I want speak to you about “faith in God.”
- You and I, we’re living in a scary time. We could use some help and hope. Do you know that Jesus gives help and hope to those who receive him? Would you pray with me today to ask him to be your savior?
- If you would, call me, and I will pray with you and I will send you Bible and Jesus will give you help and hope and eternal life.
- Contact me at InGodsLove.com

Call lawyer to pray . . . Jesus will give you help and hope and eternal life

0%

0%

Real

Not Real

Start the presentation to see live content. For screen share software, share the entire screen. Get help at polllev.com/app



Unjustified Expectations?



Real



<https://www.youtube.com/watch?v=ixFJCTrFKGY>

Call lawyer... Jesus will give help and hope

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Misleading?

Not misleading?

Start the presentation to see live content. For screen share software, share the entire screen. Get help at polllev.com/app

Lowell "The Hammer" Stanley: I hammer insurance companies



Real



Misleading:
Guarantees, Warr
Predictions





Past Results

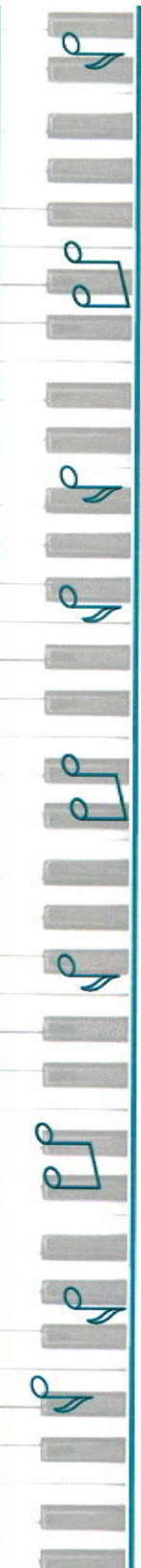


Obtained \$80 million verdict for plaintiff client in unfair competition case.

We have helped clients close more than \$1 trillion in financing transactions over the last five years, including many precedent-setting financings.

- Obtained defense verdict for clients in every case that went to trial

**Prior results do not guarantee a similar outcome*

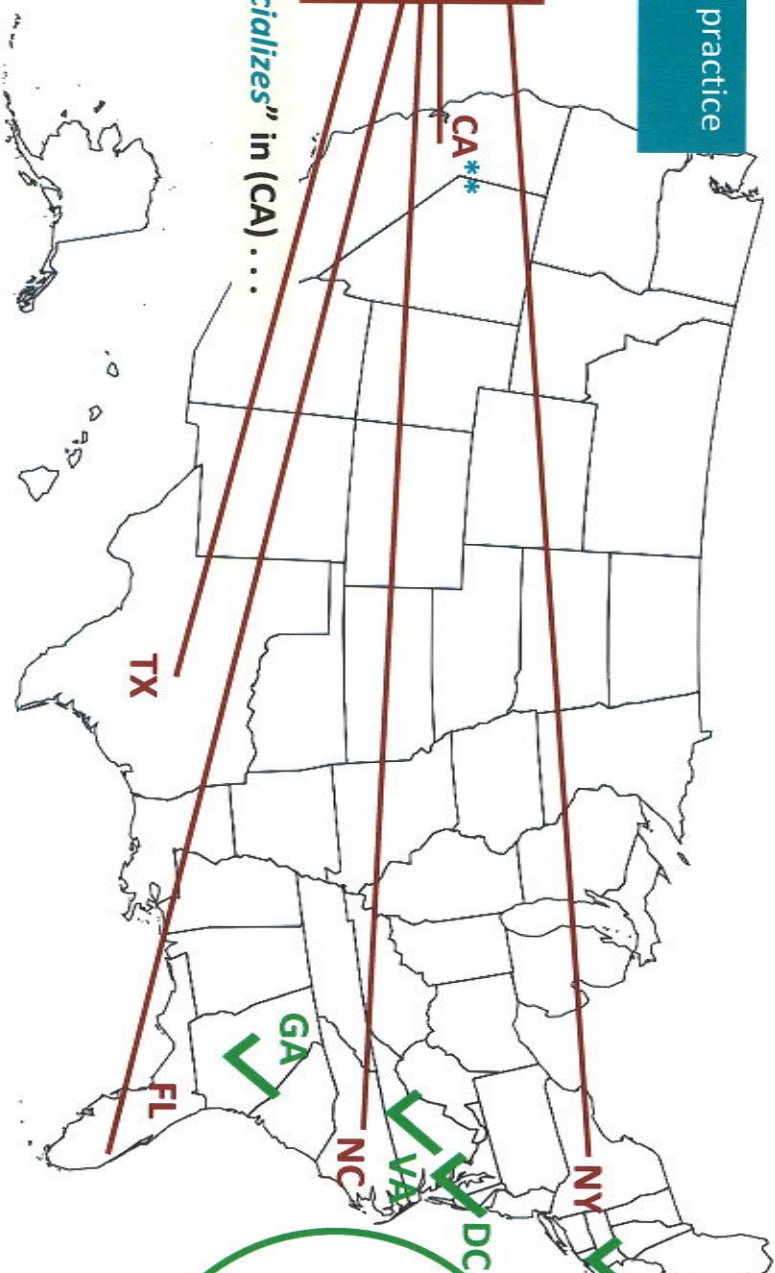


STATE VARIATION: “SPECIALIST,” “EXPERT,” “CERTIFIED”

OK to identify areas of practice
in all HuttonAK States

“Certified” +
“Specialist” or
“Expert” limited to
bar-approved
organizations

** But OK to say “specializes” in (CA)...





“SPECIALIST,” “EXPERT,” “CERTIFIED”



A lawyer shall not state or imply that a lawyer is certified as a specialist in a particular area of law, unless

- Lawyer identifies self as a “Real Estate lawyer”
- In meeting, client repeatedly refers to Lawyer as “our real estate lawyer”

Must lawyer disclaim client's reference as a real estate "expert"?

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0%

Yes

No

Start the presentation to see live content. For screen share software, share the entire screen. Get help at pollev.com/app



OMISSION OF FACT AS GIVING RISE TO MISLEADING COMM

“Dr.”

“Retired Judge”

A lawyer refers to self as "Dr."

0%

0%

Misleading

Not Misleading

Start the presentation to see live content. For screen share software, share the entire screen. Get help at polllev.com/app

A retired judge refers to self as "Retired Judge" on business cards

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0%

Misleading

Not misleading

Start the presentation to see live content. For screen share software, share the entire screen. Get help at polllev.com/app



OMISSION OF FACT AS GIVING RISE TO MISLEADING COMMU

“Dr.”

Medical malp

Special influence?

“Retired Judge”

Circumstances may create unjustified expectations

TESTIMONIALS

ENDORSEMENTS

- Actual client?
- Client consent?
- Who authored it?
- Qualified to make statements?
- Results vs. personal qualities

Truthful?
Misleading?



- Celebrity?
- Paid? (Disclosure)
- Social media & correct)?

***If permitted, may require disclaimers**



TESTIMONIALS

- Attorney Duane Johnson's web site featured a picture of Duane "The Rock" (the actor)
- Text depicting quote from Duane "The Rock" Johnson:

"I might be Duane "The Rock" Johnson, but Attorney Duane Johnson was my "rock" when he was handled my contract negotiations with WWE. Because of him, I got through some tough negotiations with WWE, which led to me getting ten times the amount of my previous compensation and a deal that left me options to take a leave of absence or terminate the contract early to pursue my acting career."

ENDORSE

Duane "The Rock" Johnson Endorses Attorney Duane Johnson

0%

0%

Real

Not Real

Start the presentation to see live content. For screen share software, share the entire screen. Get help at polllev.com/app



TESTIMONIALS

ENDORS

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NOW ASSUME:

- Attorney Duane Johnson was a sports agent, not a lawyer when representing "The Rock
- "The Rock" was and is a close friend of Attorney Duane Johnson and did refer to Attorna
- "his rock" for his moral support during a tough time in his career.
- "The Rock" Johnson would say that every word of his quote is true.

Attorney Duane Johnson was "my rock"

0%

0%

☐ Misleading

☐ Not Misleading

Start the presentation to see live content. For screen share software, share the entire screen. Get help at polllev.com/app



Dramatization or Depiction



Misleading?

If permitted, likely requires disclosure and/or disclaimer



https://www.youtube.com/watch?v=8QjinoW4d_lo&t=12s

Costs, need for disclaimers or disclosures vs. potential that attorneys leave t



SUGGESTION THAT LAWYER WILL ACT UNETHICALLY, UNLAWFUL

Do you need a traffic lawyer?

Call (844) FIXTICKET

Call (844) FIXTICKET

0%

0%

☐ Real

☐ Not Real

Start the presentation to see live content. For screen share software, share the entire screen. Get help at poller.com/app



SUGGESTION THAT LAWYER WILL ACT UNETHICALLY, UNLAWFUL

Real

Do you need a traffic lawyer?

Call (844) FIXTICKET

Real



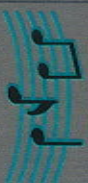
Unduly Manipulated



The billboard features a large image of a man in a white shirt and sunglasses. The text on the billboard includes:

- Nasty Boy Insurance**
- MOVE & WIN**
- THE TEAM**
- COLUMBIA**
- Are you asking for**
- FREE AUTO ACCIDENT PHON**
- 1-800 ASK-6**
- 275-4**
- GOINS**

Two red circles are drawn on the billboard: one around the 'Nasty Boy Insurance' logo and another around the '1-800 ASK-6' phone number.



Unduly Manipulative?



<https://www.youtube.com/watch?v=jr2gdpY-88w>

Jamie Casino Ad (now I fight for the victims)

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0%

Unduly manipulative

Not unduly manipulative

Start the presentation to see live content. For screen share software, share the entire screen. Get help at polllev.com/app

Which of the following has the FL Bar characterized as unduly manipulative if included in an attorney ad?

- ☐ A: Motorcycle crash
- ☐ B: Damaged house
- ☐ C: Car crash scene with deployed airbag
- ☐ D: Flashing lights on top of car
- ☐ E: Close-up of doll in toy convertible hit by remote-controlled truck (young girl hugs doll and smiles)
- ☐ F: Toy race cars crashing into each other (young boy picks up car)
- ☐ G: Man in handcuffs
- ☐ H: ALL OF THE ABOVE

SEE MORE 

Start the presentation to see live content. For screen share software, share the entire screen. Get help at pollwv.com/app



**FIRM NAME IMPLYING CONNECTION WITH GOVERNMENT
AGENCY, DECEASED LAWYER (NOT A FORMER MEMBER)**

John F. Kennedy LLP
Federal Farmers & Friends LLP
Housing & Urban Lawyers LLP



FALSELY IMPLYING PRACTICE IN ASSOCIATION WITH OTHERS

Wonderful & Associates

*If Solo Practitioner
Even if there are other non-lawyers*



INCOMPLETE DESCRIPTION OF FEES AND COSTS





FIRM NAME INCLUDES LAWYER IN PUBLIC OFFICE



Must be actively and regularly practicing with firm.

Which law firm name is likely OK?

- ☐ A: Pelosi Public Defenders
- ☐ B: Trump United Lawyers
- ☐ C: Bracewell & Guiliani
- ☐ D: None of the Above



Aca-
Awesom

HONORARY LISTS

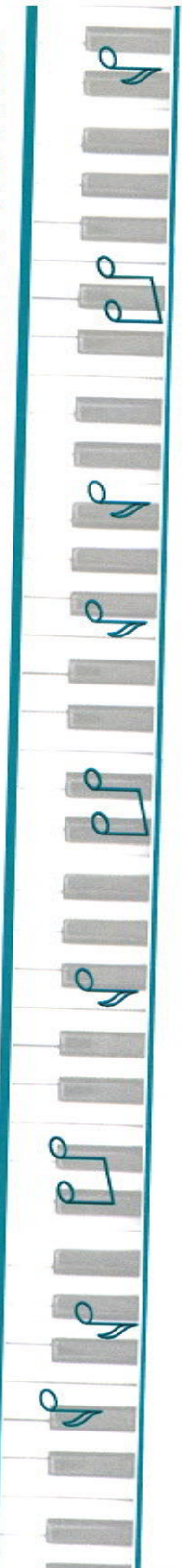
Super Lawyers



HELLO
I AM...
AMAZING!

shutterstock.com · 1117164911

Best Lawyers



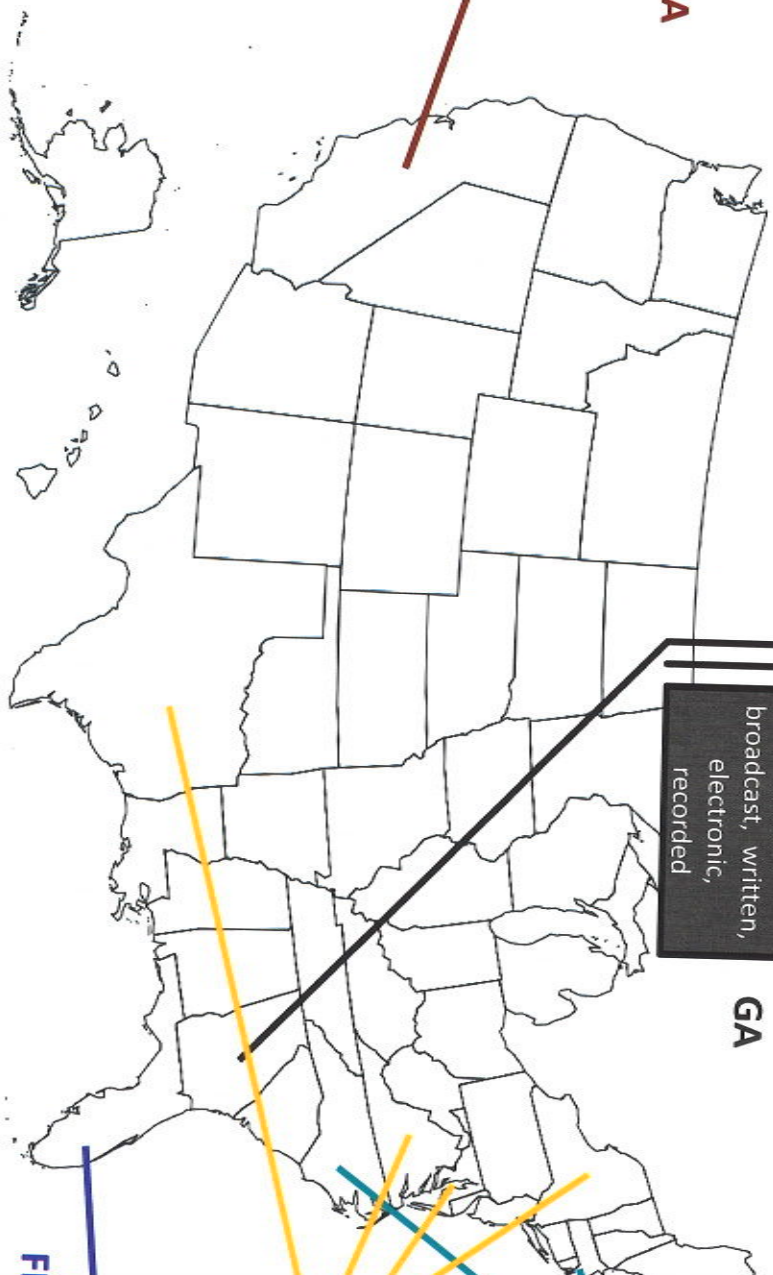
STATE VARIATION: ANY MEDIA

any written,*
recorded or
electronic
means

CA

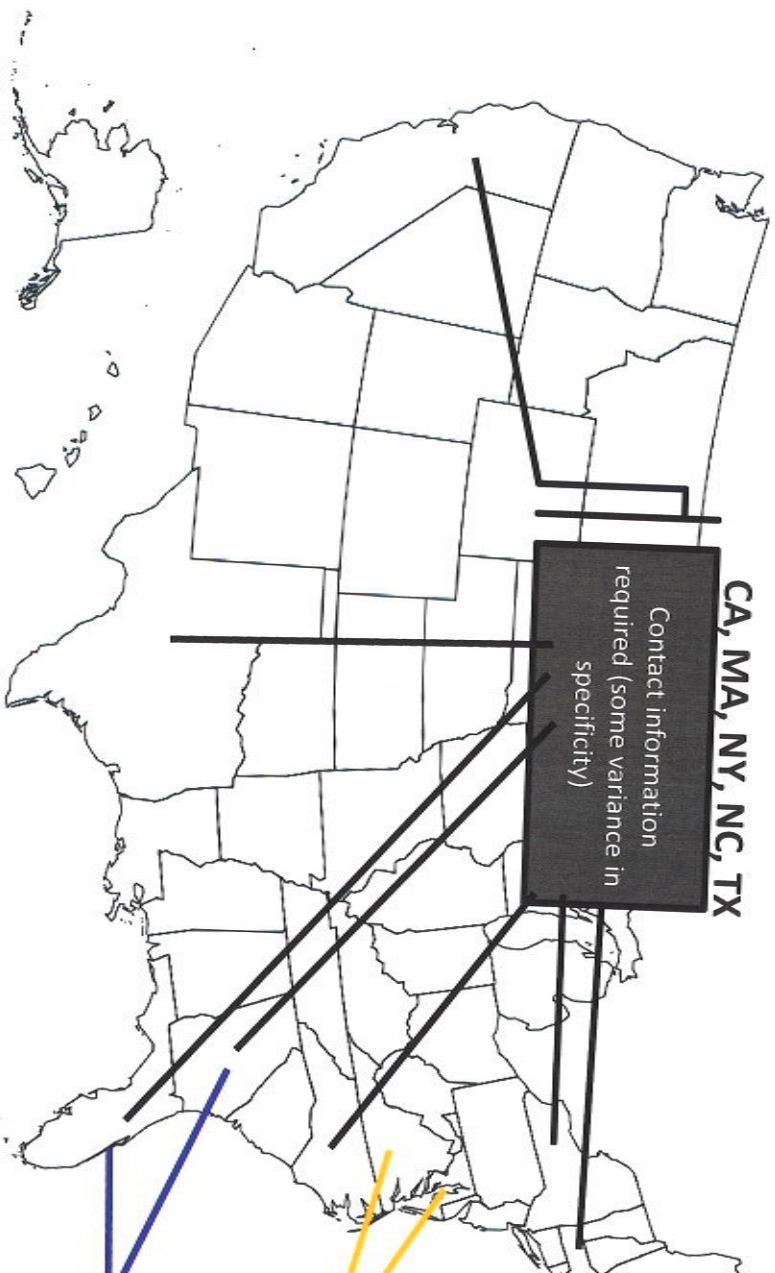
Public media,
outdoor,
broadcast, written,
electronic,
recorded

GA



F

STATE VARIATION: IDENTIFY RESPONSIBLE LAWYER



Law Firm
Apps

The
Metaverse



ANY MEDIA – COMPLIANCE CHALLENGES



Practical challenges:

- Remembering that the “advertising” or “solicitation” is not “advertising”
- Identifying “real-time”
- Keeping copies
- Getting approvals
- Including disclaimers, caveats
- “Recommendations”

"It Ain't All About the Money"



Pitch Perfect
Universal Pictu





STATE VARIATION: PAYMENT FOR REFERRALS

NY = more significant detail and variance

Costs to advertise + nominal gifts OK

DC, FL, GA, TX omit reference to gifts

Usual charge for legal service plan or non-profit referral OK

Paying for law practice under R 1.17 OK

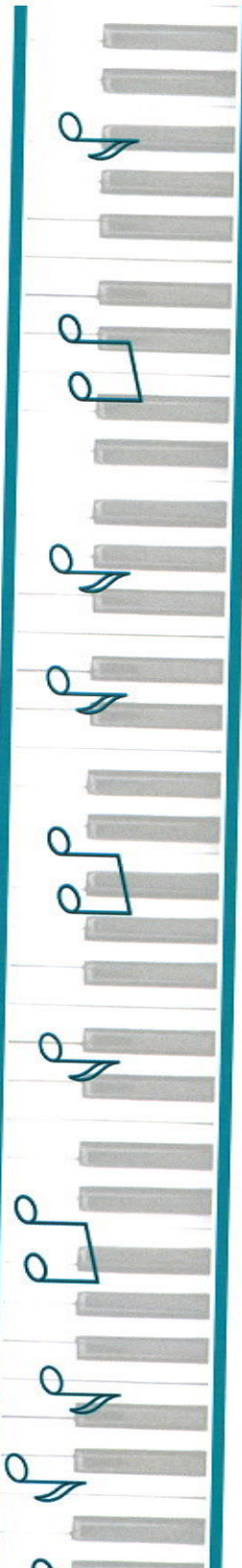
No Compensation or Value for Referrals

Non-referred referrals disc

Which of the following does NOT constitute "paying for a referral" contrary to Ru

- ☐ A: \$50 credit toward legal services for clients who post internet review of lawyer's services, not contingent on rating
- ☐ B: Website company's advertising fee calculated as % of fee
- ☐ C: Reduction of lawyer's fee for each of client's referrals to lawyer
- ☐ None of the above

Referral-Related Rules: **DIVISION OF FEES WITH LAWYERS (RULE 1.5),
NON-LAWYERS (RULE 5.4)**



DIVISION OF FEES WITH NON-LAWYERS (Rule 5.4)

- Prohibited with some limited exceptions
- DC Rule** Diverges

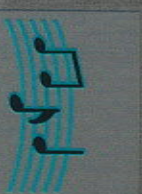


DIVISION OF FEES WITH LAWYERS OF DIFFERENT FIRMS (Rule 1.5)

- OK if division is **proportional** to services OR **joint responsibility** assumed (CA, MA, VA c requirement)
- Client agrees (confirmed in writing)
- Total fee is reasonable

In how many U.S. jurisdictions can a non-lawyer hold a financial interest in a law

- ☐ A: 1
- ☐ B: 3
- ☐ C: 5
- ☐ D: 9
- ☐ None of the above



NON-LAWYER OWNERSHIP OF LAW FIRMS

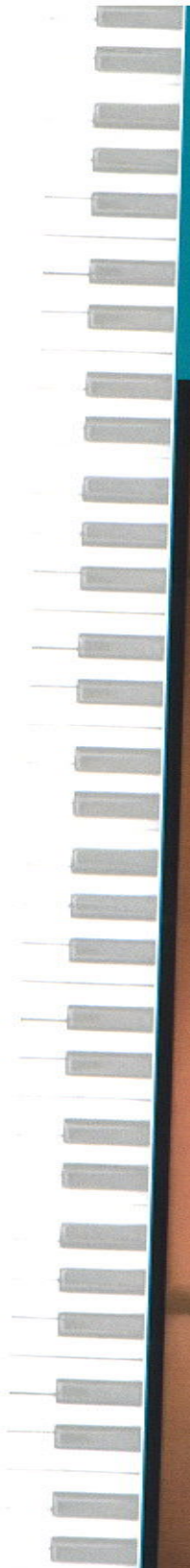
3

AZ
DC
UT

“Titanium”



Pitch Perfect
Universal Pictu



STATE VARIATION: NO SOLICITATION (Rule 7.3)



Method of interaction

- “Live” person-to-person or “in-person” contact (ABA, DC, MA, NY)
- “Real-time” electronic contact (telephone, video call) (CA, FL, GA, HI)
- time or interactive computer-accessed communication”
- In-person or “regulated telephone, social media, or other electronic communication”
- Live + all other forms of interaction (VA)

- Communication directed to specific person known to be in need of legal services in a particular matter (ABA, CA, MA, NC, TX, VA)
- Communication to one who has not sought the lawyer’s advice (DC, GA)
- Communication to prospective client (targeted, specific recipient) + motive = pecuniary gain (FL, NY)

Tri

Exceptions from restrictions

- | | |
|---|--|
| Recipient is: | |
| • Lawyer | • Recipient is routine user of legal services |
| • Family | • Recipient made known desire not to be solicited |
| • Friend | • Solicitation involves coercion, duress, or undue influence |
| • Prior professional relationship with lawyer | • Solicitation is false, misleading |
| • Prior professional relationship with firm | • Recipient is vulnerable (age, physical or mental condition) |
| | • Communication relates to death, disability, or financial matters |
| | • Court-ordered |
| | • Pursuant to legal services plan |

The term "ambulance chaser" to refer to lawyers began to be used in what year?

☐ A: 1995

☐ B: 1967

☐ C: 1930

☐ D: 1897

☐ None of the above



SOLICITATION

FIRST AMENDMENT V. STATE'S INTEREST

Preventing aspects of solicitation that involve:

- Fraud
- Undue Influence
- Intimidation
- Overreaching
- Invasion of privacy
- Other vexatious conduct

- Restrictions increase as ri (in person vs. written)
- Real time electronic = eas the recipient can ignore communication or delay r
- Special focus on hospitals, courthouses



SOLICITATION?

Lawyer presents educational seminar to live audience.

Lawyer has brochures regarding lawyer's legal services available for audience.
Lawyer hands brochures to attendees.

ABA Rule 7.3

- Communication by or on behalf of lawyer
- Directed to a specific person
- The lawyer knows or reasonably should know needs legal services in a particular matter
- Lawyer offers to provide, or reasonably can be understood as offering to provide, legal services for that matter

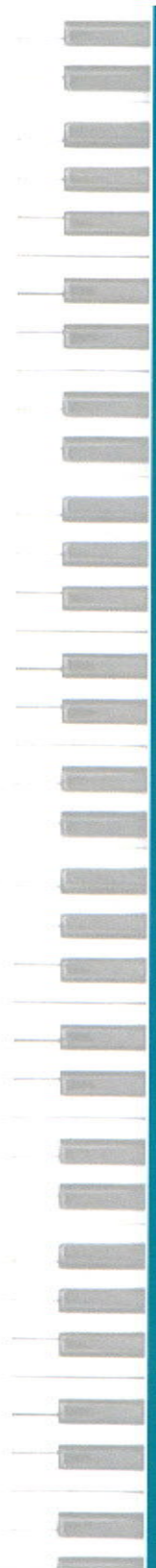
NY Rule

- Advertisement initiated by or on behalf of lawyer
- Directed to, or targeted at, a specific group of recipients
- Primary purpose of which is the retention of a client by the lawyer or law firm
- Significant motive for which is pecuniary gain

“Won’t You Come See
About Me?”



Pitch Perfect
Universal Pictu



STATE VARIATION: POLITICAL CONTRIBUTIONS (Rule 7.6)

"Pay for Play"

Political contribution



Government legal engagement or an appointment

NY says "don't make"

ABA s

Only New York Adopted in HuntonAK Jurisdictions



PROFESSIONAL RULES IMPORTANT TO LAWYER ADVERTISING AND



Rule 7: Information About Legal Services

Rule 1.6: Confidentiality

Rule 5.5: UPL

Rules 4.2, 4.3: Interacti
Represented & Unrepre

Rule 8.2: Statements Ab

STATE VARIATION: CONFIDENTIALITY (Rule 1.6)



Confidential Information =

- Information *relating to* the representation of a client (ABA, FL, MA, NY)
- Information “*gained in*” or “*acquired during*” the professional relationship (CA?, *GA, NY, NC, TX)
- Gained in professional relationship + (i) client says keep inviolate or (ii) detrimental to client (DC, NY, VA) (*GA includes)
 - All include “privileged information”

The identity of the client and fact of the attorney-client relationship is NOT "confidential information."

0%

0%

☒ True

☐ False

Start the presentation to see live content. For screen share software, share the entire screen. Get help at polllev.com/app



CONFIDENTIALITY: CLIENT IDENTITY, FACT OF A/C RELATIONSHIP

- Information *relating to the representation of a client*
 - Information “*gained in*” or “*acquired during*” the professional relationship
- Gained in professional relationship + (i) client says keep inviolate or (ii) embarrassing, detrimental
 - All include “privileged information”
- Likely meets the definition, but may not meet every state’s definition of client request or embarrassing/detrimental to reveal
 - Is there a “generally known” exception?
 - If not, consider whether embarrassing/detrimental?



PUBLICLY AVAILABLE, GENERALLY KNOWN INFORMATION

- Information *relating* to the representation of a client
 - Information “*gained in*” or “*acquired during*” the professional relationship
- Gained in professional relationship + (i) client says keep inviolate or (ii) embarrassing, detrimental
 - All include “privileged information”



- NO “generally known” exception under ABA Model Rule 1.6(b)(2) in all jurisdictions where HuntonAK has offices, so go back to de

NEW YORK:

• “Confidential information” does not ordinarily include (i) a lawyer’s legal knowledge or legal research or (ii) information that is generally known in the local community or in the trade, field or profession to which the information relates.”

RESTATEMENT

• “... information relating to representation of a client other than information that is



PUBLICLY AVAILABLE, GENERALLY KNOWN INFORMATION

“Confidential” even though:

- information was available in police reports & public records
- A claim asserted in a defamation suit
- Subject of criminal charged files and later dismissed
- Medical records made part of medical malpractice action
- Misconduct referenced in court opinion
- Filing in another court not “generally known” unless “reported in public media or widely publicized by client”

Not Confidential because:

- Mortgage was filed in public records
- 4.1 required disclosure
- Lawyer’s opinion on mortgage not confidential and existed in public records
- was “matter of public record”
- Confidentiality rule applied to about open court proceedings
- Amendment

Reason for disclosure? Interests implicated by disclosure or failure to disclose



PROFESSIONAL RULES IMPORTANT TO LAWYER ADVERTISING AND



Rule 7: Information About Legal Services

Rule 1.6: Confidentiality

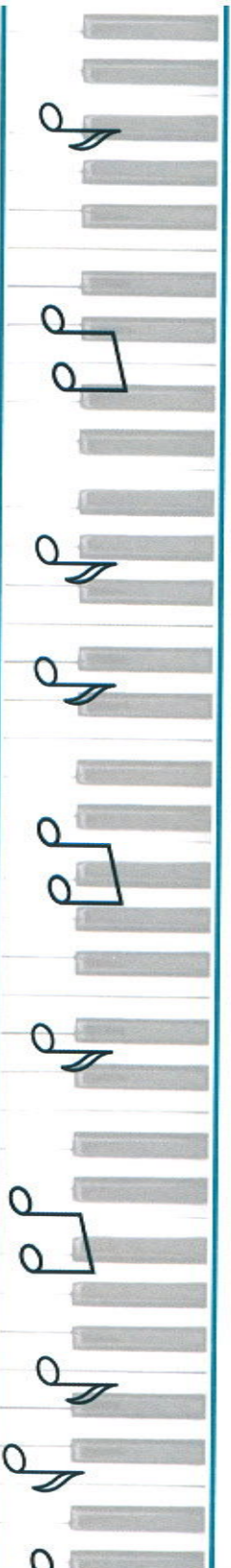
Rule 5.5: UPL

Rules 4.2, 4.3: Interacti
Represented & Unrepre

Rule 8.2: Statements Ab

“HOLDING OUT” (Rule 5.5: Unauthorized Practice of Law)

A lawyer who is not admitted to practice in this jurisdiction shall not hold out to the represent that the lawyer is admitted to practice law in this jurisdiction.



A lawyer shall not make a false or misleading communication about the lawyer or the law firm of which he or she is a member.
(Includes omission) (R. 7.1)



“Titles” (e.g., Associate, Counsel)

HOLDING OUT

Rule 5.5
Practice Pending Admission Rule

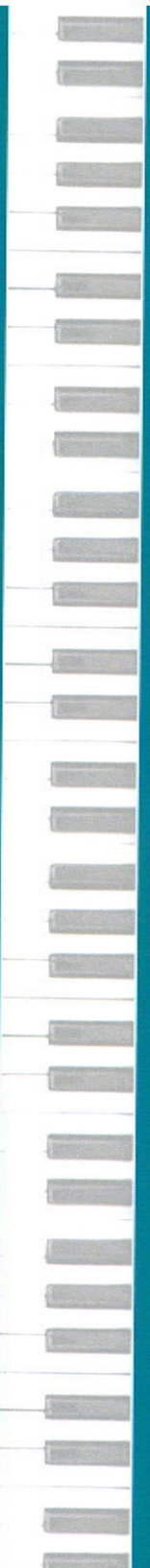
- FIRM NAME may be used in multiple jurisdictions, but lawyers must disclose respective jurisdictional limitations
- NON-LAWYERS must be identified as such
- CERTAIN TITLES imply licensure – jurisdictional limits must be disclosed

FALSE, MISLEAD

Rule 7.1



PROFESSIONAL RULES IMPORTANT TO LAWYER ADVERTISING AND



Rule 7: Information About Legal Services

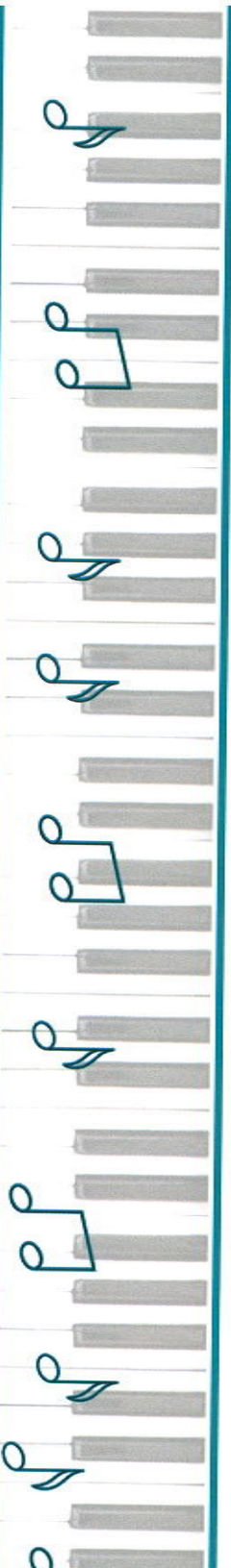
Rule 1.6: Confidentiality

Rule 5.5: UPL

Rules 4.2, 4.3: Interacti
Represented & Unrepre

Rule 8.2: Statements Ab

INTERACTIONS WITH OTHERS: RULES 4.2, 4.3



In representing/dealing on behalf of a client, a lawyer shall

Rule 4.2

Communicate about subject matter of representation

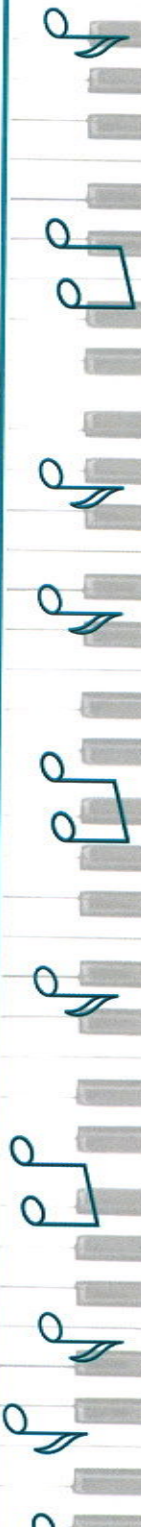
- With person known to be represented by counsel

Absent consent of counsel or authorized by law, court

Rule 4.3

- State or imply disinterest to unrepresented person
- Fail to correct misunderstanding (reasonable effort)
- Give legal advice (other than general information) if interests may conflict

INTERACTIONS WITH OTHERS: RULES 4.2, 4.3



- Can I friend request a potential client?

Is the potential client involved as a party in representations at your firm?

Is the potential client represented by counsel?

Has the potential client asked not to be contacted?

What jurisdictions are you and the client in?

Do you or your firm have a relationship with the potential client (if any)?

- Can I solicit clients on Facebook?

Anything false or misleading?

What is your relationship to the potential client (if any)?

- Can I throw shade at opposing counsel on Twitter?



PROFESSIONAL RULES IMPORTANT TO LAWYER ADVERTISING AND



Rule 7: Information About Legal Services

Rule 1.6: Confidentiality

Rule 5.5: UPL

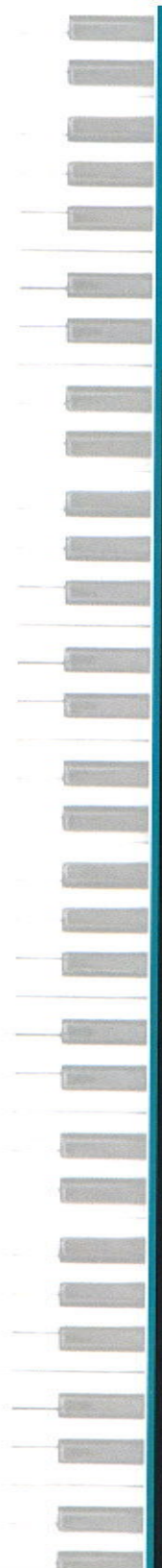
Rules 4.2, 4.3: Interacti
Represented & Unrepre

Rule 8.2: Statements Ab

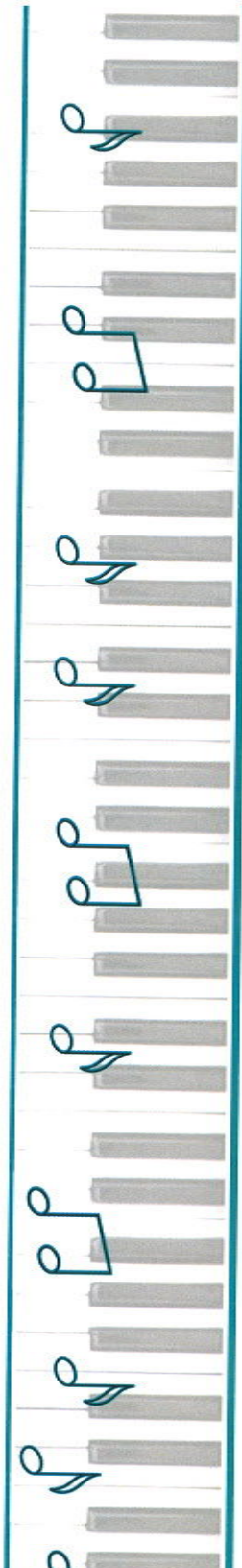
“I’m on Fire”



Pitch Perfect 2
Universal Pictu

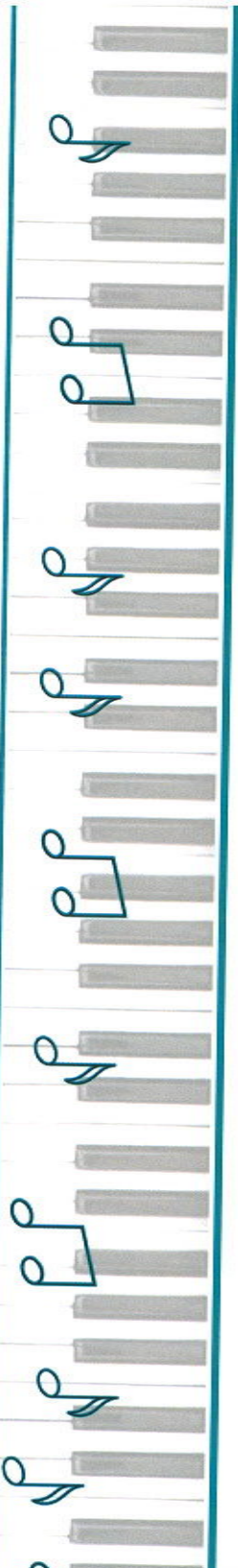


STATEMENTS ABOUT JUDGES (Rule 8.2)



A lawyer shall not make a statement that the lawyer knows to be false or with reckless disregard as to its truth or falsity concerning the qualifications or integrity of a judge, judicial officer or public legal officer, or of a candidate for election or appointment to judicial or legal office.

STATE VARIATION: STATEMENTS ABOUT JUDGES (Rule 8.2)



ADOPTS

CA NY NC TX

FL (adds mediator, arbitrator, juror or member of the venire)

MA (omits adjudicatory officer or public legal officer, or of a candidate for election, but adds "magistrate")

VA (omits "or public legal officer, or of a candidate for election or appointment to judicial or legal office")

DC GA

OMITS



FIRST AMENDMENT V. PUBLIC CONFIDENCE IN JUDICIAL

R. 8.2, Comment [1]: “. . . Expressing honest and candid opinions on such matters . . . improving the administration of justice. Conversely, false statements by a lawyer can undermine public confidence in the administration of justice.”

Lawyer does not have unrestricted 1st Amendment right to make
about judges under ethics rules

OBJECTIVE V. SUBJECTIVE

Rule 8.2 somewhat parallels *New York Times v. Sullivan* standard
official to prove libel: statement made “with knowledge that it was
reckless disregard for the truth”

Public confidence in the judicial system is important state interest justifying restr
lawyer speech that is false or reckless as to truth

0%

0%

Agree

Disagree

Start the presentation to see live content. For screen share software, share the entire screen. Get help at polllev.com/app

Which one is "Not Real"?

- ☐ A: Judge is "corrupt" and judge's bench decision is "extrajudicial"
- ☐ B: Judge is "extorting" funds from client to "line the pockets of [judge's] cronies"
- ☐ C: "Judgy B#tch"
- ☐ D: Judges are lazy and inefficient and are hampering prosecutor's efforts to enforce vice laws
- ☐ None of the above

STATEMENTS ABOUT JUDGES (Rule 8.2)

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Sonia Soto

“You’re Gonna Miss Me When I’m Gone”
a/k/a the Cup Song

