

Florida Bar Advertising Regulation and Information

Quick Reference Checklist: Direct Mail

The following quick reference checklist is intended to assist advertising lawyers in developing advertisements that comply with the lawyer advertising rules. It is not a substitute for filing the advertisement as required by Rule 4-7.19. Furthermore, even if all the questions are answered NO, it does not mean the advertisement complies with the lawyer advertising rules.

If the answer to any of the following questions is YES, the advertisement does not comply with the lawyer advertising rules, subchapter 4-7, Rules Regulating The Florida Bar.

- Does the advertisement fail to contain the name of at least one lawyer, the law firm or qualifying provider (lawyer referral service, matching service, group or pooled advertising program, directory, or tips or leads generator) responsible for the advertisement? Is the name illegible or inconspicuous? Rules 4-7.12(a)(1) and 4-7.12(d)
- Does the advertisement fail to disclose the city, town, or county of at least one bona fide office location of the advertising lawyer? Is the geographic disclosure illegible or inconspicuous? Rules 4-7.12(a)(2) and 4-7.12(d)
- Does the advertisement fail to disclose that the case or matter will be referred to another lawyer or law firm if that is the case? Rule 4-7.12(b) Is this disclosure illegible or inconspicuous? Rule 4-7.12(d) If the advertisement appears in a language other than English, does the disclosure fail to appear in that language? Rule 4-7.12(c)
- Does the advertisement contain any aspect that is misleading or deceptive? Rule 4-7.13(a)
- Does the advertisement contain any material statements that are factually or legally inaccurate? Rule 4-7.13(a)(1)
- Does the advertisement omit any information necessary to prevent it from misleading consumers? Rule 4-7.13(a)(2)

- Does the advertisement contain any information that can reasonably be interpreted as a prediction or guaranty of success or specific results? Rule 4-7.13(b)(1)
- Does the advertisement contain any references to past results that are not objectively verifiable, that omit material information or that are “literally accurate, but could reasonably mislead a prospective client regarding a material fact?” Rules 4-7.13(a)(2) and (b)(2) and Rule 4-7.14(a)(2)
- Does the advertisement contain any statements that compare or characterize the lawyer or law firm’s skills, experience, reputation, or record that are not objectively verifiable? Rule 4-7.13(b)(3)
- Does the lawyer advertise for legal employment in an area of practice in which the lawyer does not currently practice? Rule 4-7.13(b)(4)
- Does the advertisement include the voice or image of a person appearing to be a member or employee of the law firm, if the person is not, without a clear and conspicuous disclaimer that the person is not an employee or member of the firm? Rule 4-7.13(b)(5) Is the disclosure illegible or inaudible or inconspicuous? Rule 4-7.12(d) Does the disclosure fail to appear in the same language used in the advertisement? Rule 4-7.12(c)
- Does the advertisement include a dramatization of a real or fictitious event that a reasonable viewer would not know is a dramatization without a clear and conspicuous disclaimer that it is a dramatization of a real or fictitious event? Rule 4-7.13(b)(6) Is the disclosure illegible or inaudible or inconspicuous? Rule 4-7.12(d) Does the disclosure fail to appear in the same language used in the advertisement? Rule 4-7.12(c)
- Does the advertisement include an actor portraying a person in a specific profession or occupation that a reasonable viewer would not know is a fictitious portrayal without a clear and conspicuous disclaimer that the advertisement is using an actor to portray a person in the occupation or profession? Rule 4-7.13(b)(7) Is the disclosure illegible or inaudible or inconspicuous? Rule 4-7.12(d) Does the disclosure fail to appear in the same language used in the advertisement? Rule 4-7.12(c)

- Does the advertisement include any feature that states or implies that the lawyer will engage in conduct or tactics prohibited by law, court rule, or the Rules of Professional Conduct? Rule 4-7.13(b)(8)
- Does the advertisement contain any testimonials or endorsements that the person offering the testimonial is not qualified to make, that is not the actual experience of the person, that the person has received something of value for giving, that is not representative of the general experience of that lawyer or firm's clients, that the lawyer has written or drafted, or that does not include a disclaimer that prospective clients may not receive the same or similar results? Rule 4-7.13(b)(9) Is the disclosure illegible or inconspicuous? Rule 4-7.12(d) Does the disclosure fail to appear in the same language used in the testimonial? Rule 4-7.12(c)
- Does the advertisement state or imply that the advertisement, the advertising lawyer, or the advertising qualifying provider (lawyer referral service, matching service, group or pooled advertising program, directory, or tips or leads generator) is approved by The Florida Bar? Rule 4-7.13(b)(10)
- Does the advertisement include the name of a former judge preceded by the title judge (e.g., Judge Smith, retired)? Rule 4-7.13(b)(11)
- Does the advertisement include the name of a former executive official preceded by the executive title (e.g., Governor Smith, former)? Rule 4-7.13(b)(11)
- Does the advertisement include the name of a former legislator preceded by the legislative title (e.g., Sen. Smith, 2008-2012)? Rule 4-7.13(b)(11)
- Does the advertisement state or imply that another lawyer or law firm is part of, associated with, or affiliated with the advertising lawyer or law firm when that is not the case? Rule 4-7.13(b)(12)
- Does the advertisement include any reference to membership or recognition by an entity that is not generally recognized within the legal profession as a bona fide organization that bases selection on objective and uniformly applied criteria? Rule 4-7.14(a)(3)

- Only lawyers who are board certified in a particular area of the law can claim to be certified or board certified. Lawyers who are board certified can make that claim only in the area(s) of law in which they are certified. A law firm cannot claim certification. A board certified lawyer must include the certifying organization and area of certification in an advertisement in which the lawyer is claiming certification. A lawyer may claim specialization, expertise, or other variations of those terms only if the lawyer can objectively verify the claim either by board certification or by the lawyer's education, training, experience, or substantial involvement in the area of practice for which the claim is made. A law firm may claim specialization, expertise, or other variations of those terms only if the law firm can objectively verify that claim for at least 1 lawyer in the firm; if not all lawyers in the firm meet that criteria, the advertisement must contain a clear and conspicuous disclaimer that not all lawyers in the firm specialize or have expertise in that area.
 - Does the advertising lawyer who is not board certified claim certification in an area of law? Rule 4-7.14(a)(4)
 - Does the advertising lawyer who is board certified claim a certification in an area of law other than that in which he or she is board certified? Rules 4-7.14(a)(4) and 6-3.9(a)
 - Does the advertising law firm claim a certification? Rules 6-3.4(c), 6-3.9(b), and 4-7.14(a)(4)
 - Does the advertisement fail to include the name of the certifying organization and area of certification? Rule 4-7.14(a)(4)
 - Does the advertisement include the a claim of specialization, expertise, or variations of those terms that cannot be objectively verified? Rule 4-7.14(a)(5-6)
- If the advertisement quotes a fee, does it fail to disclose whether the client will be responsible for any costs or expenses in addition to the advertised fee? Rule 4-7.14(a)(7) Is the cost disclosure illegible or inconspicuous? Rule 4-7.12(d) If the advertisement appears in a language other than English, does the cost disclosure fail to appear in that language? Rule 4-7.12(c)
- If the advertisement states that the lawyer will not receive a fee unless a recovery is obtained, does the advertisement fail to disclose whether or

not the client will be responsible for costs or expenses in the absence of a recovery? Rule 4-7.14(a)(7) Is the cost disclosure illegible or inconspicuous? Rule 4-7.12(d) If the information about fees appears in a language other than English, does the cost disclosure fail to appear in the same language? Rule 4-7.12(c)

- Does the advertisement include any image, sound, video, or dramatization that solicits legal employment by appealing to a prospective client's emotions rather than to a rational evaluation of a lawyer's suitability to represent the prospective client? Rule 4-7.15(a)
- Does the advertisement use a judge or an actor portraying a judge to endorse or act as a spokesperson for the lawyer or law firm? Rule 4-7.15(b)
- Does the advertisement use a law enforcement officer or an actor portraying a law enforcement officer to endorse or act as a spokesperson for the lawyer or law firm? Rule 4-7.15(b)
- Does the advertisement contain the voice or image of a celebrity? Rule 4-7.15(c)
- Does the advertisement offer an economic incentive such as a give-away to hire the lawyer or review the advertisement? Rule 4-7.15(d)
- Has the advertisement been paid for by another lawyer who is not in the same firm as the advertising lawyer? Rule 4-7.17(a)
- Has the advertisement been paid for by a nonlawyer? Rule 4-7.17(c)
- If the advertising law firm employs a fictitious or trade name, does the fictitious or trade name fail to appear on all the firm's advertising, letterhead, business cards, office sign, pleadings, and other firm documents? Rule 4-7.21(c)
- Does the direct mail advertisement fail to clear and conspicuously mark the face of the envelope and each separate enclosure of the direct mail advertisement "Advertisement" in contrasting text relative to other text appearing in the advertisement in a way that a reasonable viewer should notice it? Rule 4-7.18(b)(2)(B) Is the word "Advertisement" on the envelope and each separate enclosure illegible or inconspicuous? Rule 4-7.12(d) If the direct mail advertisement appears in a language other than English, does the word "Advertisement" fail to appear in that

language on the face of the envelope and each separate enclosure? Rule 4-7.12(c)

- If sent as a self-mailer, does the direct mail advertisement fail to prominently mark the address panel and the inside of the self-mailer “Advertisement” in contrasting text relative to other text appearing in the advertisement in a way that a reasonable viewer should notice it? Rule 4-7.18(b)(2)(B) Is the word “Advertisement” on the address panel and the inside of the self-mailer illegible or inconspicuous? Rule 4-7.12(d) If the direct mail advertisement appears in a language other than English, does the word “Advertisement” fail to appear in that language on the address panel and inside of the self-mailer? Rule 4-7.12(c)
- Does the direct mail advertisement fail to include a written statement of the advertising lawyer or law firm’s background, training, and experience? Rule 4-7.18(b)(2)(C) Is the statement of qualifications illegible or inconspicuous? Rule 4-7.12(d) If the advertisement appears in a language other than English, does the statement of qualifications fail to appear in that language? Rule 4-7.12(c)
- Does the direct mail advertisement include a contract that is not marked “SAMPLE” at the top of each page in red ink in type size one size larger than the largest used in the contract and “DO NOT SIGN” in the client signature line? Rule 4-7.18(b)(2)(D) Are “SAMPLE” and “DO NOT SIGN” illegible or inconspicuous? Rule 4-7.12(d) If the direct mail advertisement appears in a language other than English, do the words “SAMPLE” and “DO NOT SIGN” fail to appear in that language? Rule 4-7.12(c)
- Does the direct mail advertisement or any of its enclosures appear to resemble legal documents? Rule 4-7.18(b)(2)(E)
- If a lawyer other than the one whose name or signature appears in the direct mail advertisement will actually handle the case or matter or if the matter will be referred to a lawyer in another law firm, does the direct mail advertisement so indicate? Rule 4-7.18(b)(2)(F) Is this disclosure illegible or inconspicuous? Rule 4-7.12(d) If the advertisement appears in a language other than English, does this disclosure fail to appear in that language? Rule 4-7.12(c)

- If the direct mail advertisement has been prompted by a specific occurrence involving or affecting the intended recipient of the communication or a family member, does it fail to disclose how the lawyer obtained the information prompting the communication? Rule 4-7.18(b)(2)(G) Is this disclosure illegible or inconspicuous? Rule 4-7.12(d) If the advertisement appears in a language other than English, does the disclosure of where the information was obtained fail to appear in that language? Rule 4-7.12(c)
- If the direct mail advertisement has been prompted by a specific occurrence, does the direct mail advertisement disclose the nature of the prospective client's legal problem on the envelope (or outside if sent as a self-mailing brochure)? Rule 4-7.18(b)(2)(H)
- If the direct mail advertisement concerns an action for personal injury or wrongful death or otherwise relates to an accident or disaster involving the intended recipient or a relative of that person, have fewer than 30 days passed since the date of the injury, death, accident, or disaster? Rule 4-7.18(b)(1)(A)
- If the direct mail advertisement concerns a request for injunction against violence and is sent to the respondent in the injunction petition, is the direct mail advertisement being sent before the respondent has been served with a notice of process in the matter? Rule 4-7.18(b)(1)(G)

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