



WSAJ Statement of Principles - Lawyer Marketing

The landmark decision of Bates v. State Bar of Arizona, 433 U.S. 350 (1977) recognized lawyer advertising as a form of commercial speech protected by both the First and Fourteenth Amendments to the United States Constitution. Since Bates, lawyer advertising has been an inescapable – and very controversial - aspect of the legal profession.

Like many other state Bar Associations and legal Associations, WSAJ has struggled over the years with how best to strike a proper balance between (a) constitutionally-protected forms of lawyer marketing being employed by its members, and (b) encouraging its membership to at all times uphold the highest ethical standards of practice so as to not sully the public's perception of the legal profession as a whole.

In hopes of promoting integrity within the legal profession, encouraging fair standards of practice among our members, improving the public's perception of the legal profession as a whole, and demonstrating our membership's high standards and expectations to clients and the general public, while at the same time respecting the constitutional rights of our members to engage in permissible legal advertising, WSAJ offers the following set of *voluntary* principles for it members to consider and comply with when engaging in legal marketing and advertising, whether in-person, via television, print media, telephone, real-time electronic contact, social media of any kind or via any other form of emerging technology not listed above.

1. **Consideration of Public's Perceptions of Lawyers:** Whenever engaging in legal or lawyer advertising, *in whatever form*, members should consider always the potential negative impact of such advertising on the public's perception of the legal profession.
2. **Compliance with Rules of Professional Conduct:** When engaging in legal marketing or advertising, WSAJ expects its members to fully comply with the Rules of Professional Conduct (RPC's) which relate to lawyer advertising/marketing, to specifically include RPC's 7.1, 7.2 and 7.3. Copies of these rules are attached at the end of this document for ease of reference. These standards, it should be understood, set the *minimum standards* for such advertising; it is our hope is that WSAJ members will hold themselves to a higher standard of conduct when advertising.
3. **Preserving the Dignity and Professionalism of the Profession:** WSAJ members should strive to create and disseminate lawyer advertising or marketing which exemplifies the inherent dignity, integrity and professionalism of the legal community, as well as the commitment of the legal profession to serve the public's legal needs in the tradition of the law as a learned profession.

4. **Avoidance of Inappropriate Advertising Techniques and Content:** How legal advertising and marketing conveys its message is as important as the message itself. Consistent with the goals referenced in No. 3, above, advertising or marketing which includes the use of overly-dramatic music, unseemly slogans, hawkish spokespersons, slapstick routines, images of money or other outlandish settings or images which do not instill confidence in the lawyer and the legal profession as a whole are strongly discouraged, as such images undermine the serious purpose of the legal services and the judicial system.
5. **No False or Misleading Statements:** No WSAJ member should make false or misleading statements about the lawyer or the lawyer's services, to specifically include use of false or misleading statements about the lawyer's level of experience, past achievements/cases, trial results or experience or competence or experience in handling the kind of legal matters which are the subject of the advertising/marketing. Such advertising is already impermissible per the RPC's, as well.
6. **No Unauthorized In-Person Solicitation/Direct Contact with Prospective Clients:** RPC 7.3 already prohibits unwanted or uninvited direct or indirect in-person contact with prospective clients, whether in-person, via telephone or electronically under most circumstances. See, RPC 7.3, attached. As such, a WSAJ member should not personally nor through a representative contact any person or a deceased's survivor for purposes of soliciting a potential client when there has been no request for such contact from the injured person, such person's family members, relatives, close personal friends, retained professional advisors (i.e. legal guardian), union representative, or the Department of Labor & Industries in cases of third-party representation.
7. **Obtaining Publicly-Available Reports or Information for Solicitation Purposes Discouraged:** A WSAJ member should not obtain reports from law enforcement agencies, notices of health care provider liens or similarly publicly-available governmental records for the sole purpose of engaging in direct or targeted mail or other commercial solicitation of potential clients. Members who do decide to engage in such solicitation/advertising should, in any event, not do so for at least **30 days** following the injury or damages-causing event, consistent with the limitation approved by the U.S. Supreme Court in Florida Bar v. Went-for-It, Inc., 515 U.S. 618(1995).
8. **Visiting the Scene of an Event for Solicitation Purposes Strongly Discouraged:** A WSAJ member should not go to the scene of an event that caused injury or death, for the purpose of engaging in commercial solicitation, unless first requested to do so by the injured person, such person's family members, relatives, close personal friends, retained professional advisors (i.e. legal guardian), union representative, or the Department of Labor & Industries in cases of third-party representation, or by an attorney already representing an injured person or survivor(s).

9. **Holding Press Conferences/Planned Media Events Solely to Solicit/Locate Clients Discouraged:** No WSAJ member should hold a press conference or initiate press contact following a disaster, mass tort or incident that resulted in multiple injuries, claims or deaths for the sole purpose of attracting cases or clients.
10. **Advertise for and Accept Only Cases You are Competent to Handle; Pure Referral of Cases Strongly Discouraged without Full, “Up Front” Disclosure:** WSAJ members should advertise for and accept only cases and legal matters for which the attorney and co-counsel possess the requisite knowledge, skill, time and resources to competently and diligently prosecute the case/matter. Furthermore, if the lawyer’s intention is to refer the case to another attorney for handling or engage the services of another attorney to represent their interests, this should be fully disclosed to the client at the time of first meeting or engagement, whichever occurs first. Advertising for cases or claims purely for purposes of making referrals to other lawyers, with the intention of being paid a fee for such cases, is discouraged.
11. **Solicitation Intended to Entice Away Another Member’s Client:** A WSAJ member should not engage in any solicitation designed to entice away another attorney’s current client(s).

RELEVANT RULES OF PROFESSIONAL CONDUCT RE: LEGAL ADVERTISING

Rule 7.1 Communications Concerning a Lawyer’s Services

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 statement considered as a whole not materially misleading.

Rule 7.2 Advertising

- (a) Subject to the requirements of Rules 7.1 and 7.3, a lawyer may advertise services through written recorded or electronic communication, including public media.
- (b) A lawyer shall not give anything of value to a person for recommending the lawyer’s services, except that a lawyer may
- (1) pay the reasonable costs of advertisements or communications permitted by this Rule;
 - (2) pay the usual charges of a legal service plan or a not-for-profit lawyer referral service;
 - (3) pay for a law practice in accordance with Rule 1.17; and
 - (4) refer clients to another lawyer pursuant to an agreement not otherwise prohibited under these Rules that provides for the other person to refer clients or customers to the lawyer, if
 - (i) the reciprocal referral agreement is not exclusive, and
 - (ii) the client is informed of the existence and nature of the agreement.
- (c) Any communication made pursuant to this Rule shall include the name and office address of at least one lawyer or law firm responsible for its content.

Rule 7.3 Direct Contact with Prospective Clients

(a) A lawyer shall not, directly or through a third person, by in-person, live telephone or real-time electronic contact solicit professional employment from a prospective client when a significant motive for the lawyer's doing so is the lawyer's pecuniary gain, unless the person contacted:

- (1) is a lawyer;
- (2) has a family, close personal, or prior professional relationship with the lawyer; or
- (3) has consented to the contact by requesting a referral from a not-for-profit lawyer referral service.

(b) A lawyer shall not solicit professional employment from a prospective client 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 prospective client has made known to the lawyer a desire not to be solicited by the lawyer, or
- (2) The solicitation involves coercion, duress or harassment.

(c) **[Reserved.]**

(d) Notwithstanding the prohibitions in paragraph (a), a lawyer may participate with a prepaid or group legal service plan operated by an organization not owned or directed by the lawyer that uses in-person or telephone contact to solicit memberships or subscriptions for the plan from persons who are not known to need legal services in a particular matter covered by the plan.