

Table of Contents

Volume 1

CHAPTER 1. THE HISTORY OF THE LAW OF LAWYER ADVERTISING AND MARKETING

- § 1:1 Lawyer advertising in nineteenth century America: the example of Abraham Lincoln
- § 1:2 The monopolistic movement at the turn of the twentieth century
- § 1:3 The emergence of judicial hostility toward lawyer advertising
- § 1:4 Ethics codes and the strict clamp-down on lawyer advertising
- § 1:5 The transformation of the 1960s and 1970s
- § 1:6 *Bates v. State Bar of Arizona and the launching of the modern epoch*
- § 1:7 The persistent resistance of some bar authorities to lawyer advertising and marketing

CHAPTER 2. A CONSTITUTIONAL PRIMER: A SUMMARY OF MODERN FIRST AMENDMENT FREE SPEECH AND COMMERCIAL SPEECH DOCTRINES

- § 2:1 The place of commercial speech doctrine within the larger body of free speech jurisprudence
- § 2:2 Tiers of scrutiny in modern constitutional law
- § 2:3 —Rational basis review
- § 2:4 —Intermediate scrutiny review
- § 2:5 —Strict scrutiny review
- § 2:6 Overview of the structure of First Amendment doctrine
- § 2:7 Elevated scrutiny for content-based regulation of speech
- § 2:8 Viewpoint discrimination
- § 2:9 Content-neutral regulation of speech
- § 2:10 Reduction of speech protection in special settings
- § 2:11 The offended viewer may avert his or her eyes
- § 2:12 Summarizing the values of the First Amendment

- § 2:13 The First Amendment and “commercial speech”
- § 2:14 The original lack of protection for commercial speech
- § 2:15 The emergence of protection for commercial speech
- § 2:16 The *Central Hudson* test
- § 2:17 The steady expansion of protection for commercial speech
- § 2:18 The push to expand beyond the protections of *Central Hudson*
- § 2:19 Applying prong one *Central Hudson*: speech must be about lawful activity
- § 2:20 Applying prong one *Central Hudson*: speech must not be misleading
- § 2:21 Applying prong two of *Central Hudson*: substantial government interests
- § 2:22 The emerging dominance of prongs three and four of *Central Hudson*
- § 2:23 Prong three of *Central Hudson*: direct and material advancement
- § 2:24 Prong four of *Central Hudson*: narrow tailoring
- § 2:25 The government bears the burden of proof
- § 2:26 The role of empirical data in applying *Central Hudson*
- § 2:27 Discrimination against commercial speech on grounds unrelated to its commercial character
- § 2:28 Prior restraints
- § 2:29 Regulation of the speech of lawyers outside of advertising—Extrajudicial statements
- § 2:30 Does *Central Hudson* apply to lawyer advertising?

CHAPTER 3. THE SUPREME COURT’S LAWYER ADVERTISING DECISIONS

- § 3:1 *Bates v. State Bar of Arizona*
- § 3:2 *Ohralik v. Ohio State Bar Association*
- § 3:3 *In re Primus*
- § 3:4 *In re R.M.J.*
- § 3:5 *Zauderer v. Office of Disciplinary Council of the Supreme Court of Ohio*
- § 3:6 *Shapiro v. Kentucky Bar Association*
- § 3:7 *Peel v. Attorney Registration and Disciplinary Commission of Illinois*
- § 3:8 *Edenfeld v. Fane*
- § 3:9 *Ibanez v. Florida Department of Business and Professional Regulation, Board of Accountancy*
- § 3:10 *Florida Bar v. Went for It, Inc.*

TABLE OF CONTENTS

**CHAPTER 4. SPECIAL ISSUES RAISED BY
THE SOCIETAL INTEREST IN THE
REGULATION OF THE LEGAL PROFESSION**

- § 4:1 The tradition of “self-regulation” of the legal profession
- § 4:2 Self-regulation and its relation to general consumer protection advertising laws
- § 4:3 Self-regulation and the public trust
- § 4:4 The established constitutional interests that justify regulation
- § 4:5 The aspirations of the profession
- § 4:6 —Enhancing affordable access to legal services
- § 4:7 —Fostering public confidence and professionalism
- § 4:8 —Helping the public to understand its legal rights
- § 4:9 —Promoting dignity and good taste
- § 4:10 —Avoidance of ambiguous and confusing advertising that may be misleading
- § 4:11 —Identification of target audience

**CHAPTER 5. COMPETING MODELS OF
LAWYER ADVERTISING REGULATION**

- § 5:1 The competing models of lawyer advertising regulation
- § 5:2 The professionalism model
- § 5:3 The consumer protection model
- § 5:4 The First Amendment and the competing models: Is lawyer advertising different from other forms of commercial speech?
- § 5:5 The argument that traditionally broad power to regulate the legal profession includes a correspondingly broad power to regulate lawyer advertising
- § 5:6 The counter argument that lawyer advertising regulation is subject at least in part to the general First Amendment hostility toward paternalism

**CHAPTER 6. REGULATING THE CONTENT
OF LAWYER ADVERTISING AND
MARKETING**

- § 6:1 The baseline prohibition against materially misleading statements or omissions
- § 6:2 Distinctions between “actually misleading,” “inherently misleading” and “potentially misleading” advertising, and the role of empirical or objective evidence

- § 6:3 Supreme Court treatment of the various forms of “misleading” advertising
- § 6:4 Lower court applications of the various forms of “misleading” advertising
- § 6:5 —A case study: *Mason v. Florida Bar*
- § 6:6 Requirements that advertisements be identified as advertisements
- § 6:7 Statements may not imply that outcomes will not be related to the facts or merits
- § 6:8 Statements that suggest the lawyer will act unethically or illegally for a client
- § 6:9 Statements that create unjustified expectations
- § 6:10 Comparative and self-laudatory statements
- § 6:11 Self-laudatory statements
- § 6:12 Self laudatory statements—Case study: the Allen Firm “*Best Lawyers in America*” litigation
- § 6:13 Regulation of undignified advertising and marketing
- § 6:14 —Case study: *The Florida Bar v. Pape*
- § 6:15 Appeals to emotion, “puffery,” and use of other “catchy” stock advertising devices
- § 6:16 Restrictions on dramatizations and simulations
- § 6:17 Case study: the battle over New York’s newly restrictive rules
- § 6:18 Complete bans on dramatizations or simulations
- § 6:19 Constitutional and policy issues posed by dramatizations
- § 6:20 —Case study: *Farrin v. Thigpen*
- § 6:21 Use of actors rather than lawyers actually in the law firm
- § 6:22 Portrayals of a judge or jury
- § 6:23 Disclosure requirements for use of actors, dramatizations, or simulations
- § 6:24 Props, illustrations, images, and other visual devices
- § 6:25 Mottos or trade names that state or imply the ability to get results
- § 6:26 Testimonials and endorsements
- § 6:27 Total bans on certain testimonials and endorsements
- § 6:28 Testimonials and endorsements regulated by disclaimer requirements
- § 6:29 Restrictions on advertising references to past successes
- § 6:30 Disclaimers that no comparative claims of superior quality are being made
- § 6:31 Catch-all disclosure requirements about hiring lawyers

TABLE OF CONTENTS

- § 6:32 Disclaimers that contingency fee clients may be liable for costs
- § 6:33 Advertising fees and rates for “routine services” or at low costs or discounts
- § 6:34 Regulations on honoring advertised fee prices
- § 6:35 Requirements that practice locations be disclosed in the advertising
- § 6:36 Affirmative requirements that information regarding a lawyer’s qualifications or experience be disclosed
- § 6:37 Regulation of advertising concerning specialties, practice areas, and certifications
- § 6:38 The ABA Model Rule on practice fields and specialization
- § 6:39 Disclaimer rules and other regulations regarding specialization or certification
- § 6:40 Regulations regarding names, trade names, and letterheads
- § 6:41 Listing non-law credentials or certifications, such as “certified public accountant”
- § 6:42 Newsletters
- § 6:43 Safe-harbor provisions permitting or presumptively permitting specified content
- § 6:44 Prohibitory regulation versus regulation through disclaimers or disclosure requirements
- § 6:45 The judicial preference for disclaimers
- § 6:46 Requirement that disclaimers be effectively placed
- § 6:47 Disclaimers may not be imposed unless the underlying advertising is at least potentially misleading
- § 6:48 Advertising by lawyers not licensed to practice in the state in which the advertising is disseminated
- § 6:49 Disclosures imposed on noncommercial speech
- § 6:50 Seeking pre-enforcement relief in federal court

CHAPTER 7. REGULATING THE MODES, METHODS, AND MEDIA USED IN LAWYER ADVERTISING AND MARKETING

- § 7:1 Approval of advertisements by lawyers within a firm
- § 7:2 Retention and record-keeping: requirement that lawyers retain advertising copy
- § 7:3 Requirements that advertising be filed with state bar authorities
- § 7:4 Restrictions on lawyers paying for advertising of other lawyers

- § 7:5 Paying to channel business
- § 7:6 Rules regulating lawyer referral services
- § 7:7 Prepaid legal services
- § 7:8 Direct solicitation of clients
- § 7:9 Contact with prospective clients who are minors or
prospective clients in vulnerable or impaired physical,
emotional, or mental condition
- § 7:10 Exception for former clients or persons with whom the
lawyer has a close personal or family relationship
- § 7:11 Short-term time limitations barring solicitations arising
from accidents or disasters
- § 7:12 Restrictions on solicitations of persons represented by
legal counsel
- § 7:13 Restrictions on the locations at which solicitations may
occur
- § 7:14 Requiring that solicitations include information on
where to file complaints against lawyers
- § 7:15 The special right of political and nonprofit advocacy
organizations to solicit clients
- § 7:16 Targeted mail solicitations
- § 7:17 Restrictions on the appearance and format of
solicitation letters and communications
- § 7:18 Requirements that solicitations disclose how the
lawyer obtained information about the client
prompting the solicitation
- § 7:19 Disclosure that another lawyer will actually handle
the matter
- § 7:20 Issues relating to the use of more than one language
in advertising
- § 7:21 Special restrictions on radio or television advertising
- § 7:22 Social media, digital and other Internet or computer-
accessed advertising
- § 7:23 Placement of disclaimers in Internet advertising
- § 7:24 Regulation of online blogs and restrictions on attorney
discussions of completed proceedings
- § 7:25 On-line referral services
- § 7:26 Internet “performance-based” or “pay per click”
advertising
- § 7:27 Restrictions on Internet pop-up advertising and hidden
computer codes
- § 7:28 Responding to Web site hyperlinks
- § 7:29 Disciplinary authority and choice of law issues in
lawyer advertising matters
- § 7:30 Lawyers may not represent that the bar approves of
filed advertisements

Volume 2

CHAPTER 8. COMPENDIUM OF STATE ADVERTISING RULES

§ 8:1	Alabama
§ 8:2	Alaska
§ 8:3	Arizona
§ 8:4	Arkansas
§ 8:5	California
§ 8:6	Colorado
§ 8:7	Connecticut
§ 8:8	Delaware
§ 8:9	District of Columbia
§ 8:10	Florida
§ 8:11	Georgia
§ 8:12	Hawaii
§ 8:13	Idaho
§ 8:14	Illinois
§ 8:15	Indiana
§ 8:16	Iowa
§ 8:17	Kansas
§ 8:18	Kentucky
§ 8:19	Louisiana
§ 8:20	Maine
§ 8:21	Maryland
§ 8:22	Massachusetts
§ 8:23	Michigan
§ 8:24	Minnesota
§ 8:25	Mississippi
§ 8:26	Missouri
§ 8:27	Montana
§ 8:28	Nebraska
§ 8:29	Nevada
§ 8:30	New Hampshire
§ 8:31	New Jersey
§ 8:32	New Mexico
§ 8:33	New York
§ 8:34	North Carolina
§ 8:35	North Dakota
§ 8:36	Ohio
§ 8:37	Oklahoma

§ 8:38	Oregon
§ 8:39	Pennsylvania
§ 8:40	Rhode Island
§ 8:41	South Carolina
§ 8:42	South Dakota
§ 8:43	Tennessee
§ 8:44	Texas
§ 8:45	Utah
§ 8:46	Vermont
§ 8:47	Virginia
§ 8:48	Washington
§ 8:49	West Virginia
§ 8:50	Wisconsin
§ 8:51	Wyoming

Table of Laws and Rules

Table of Cases

Index