

ATTORNEYS' ADVERTISING COMMISSION (AAC or the Commission) FAQs

Is This An Advertisement?

- **WHAT RULES REGULATE ATTORNEY ADVERTISING IN KENTUCKY?**

The Kentucky Supreme Court Rules (**SCR 3.130(7.01 – 7.60)**) apply to all advertisements for legal services. All advertisements are also subject to the Attorneys' Advertising Commission Regulations. Those are available by [clicking here](#).

- **WHAT IS AN ADVERTISEMENT?**

An advertisement is any information or communication containing a lawyer's name or other identifying information to make known a lawyer's services according to **SCR 3.130(7.01)(1)**.

Typically, any time you put something about your practice on television, radio or Internet, in the newspaper or telephone book, on a billboard, or in a letter to potential clients, it is an advertisement. However, **SCR 3.130(7.01)(1)** provides a list of exceptions. Those items are NOT considered advertisements.

- **IS THE USE OF A FIRM NAME ONLY CONSIDERED AN ADVERTISEMENT?**

No. The use of a firm name only without any accompanying identification as a lawyer or law firm is not an advertisement under **SCR 3.130(7.01)(1)**.

- **IS MY FIRM NEWSLETTER AN ADVERTISEMENT?**

Yes. Newsletters qualify as direct mail communications and must comply with the requirements of Rule 3.130(7) as well as **SCR 3.130(4.5)**. Newsletters submitted for an Advisory Opinion should be submitted pursuant to **SCR 3.130(7.03)**. Any Advisory Opinion would apply only to the newsletter submitted. It would not apply to all firm newsletters. "Advertising Material" must be on the envelope or mailing label, on the same side as the return address of the attorney or firm name. Three (3) copies of the advertisement and three (3) copies of the envelope, or mailing label, must accompany a submission for an Advisory Opinion.

Electronic newsletters must also conform to the requirements of **SCR 3.130(4.5)** by stating "Advertising Material" somewhere in the subject line of the e-newsletter. Each edition of the e-newsletter, unless identical, must be filed for review as a new advertisement with the appropriate filing fee if an Advisory Opinion is sought. Three (3) copies of the advertisement must accompany the submission.

NOTE: If the newsletter is sent only to individuals identified in **SCR 3.130(4.5)(1)(a-c)**, it is not an advertisement.

- **IS A SEMINAR ANNOUNCEMENT AN ADVERTISEMENT?**

Seminar announcements appearing in public print media must comply with the regulations governing other forms of print advertisements set forth in **SCR 3.130(7.01-7.50)**. Seminar announcements disseminated through the mail must comply with **SCR 3.130(4.5)**, rules governing direct communications.

- **IS THE SIGN ON MY OFFICE THAT STATES, "EXERCISE YOUR RIGHT TO COUNSEL BEFORE YOU TALK TO THE POLICE" AN ADVERTISEMENT?**

Yes, but only would need to be submitted if an Advisory Opinion is sought under **SCR 3.130(7.03)** (i.e., \$75.00 filing fee and three copies required).

Submission & Approval

- **DO I HAVE TO SEND MY ADVERTISEMENT TO THE KBA AAC?**

Only advertisements in which an Advisory Opinion is sought must be submitted to the KBA AAC.

- **HOW DO I SUBMIT?**

Supreme Court Rules require submission of attorney advertisements if an Advisory Opinion is sought.

SCR 3.130(7.03): All advertisements for an Advisory Opinion must be submitted with a \$75.00 filing fee. Submit three (3) copies of the advertisement to the AAC at least thirty (30) days before you begin to use the advertisement.

You must not use the advertisement for 30 days if seeking an Advisory Opinion.

- **WHAT IS THE FEE FOR AN ADVISORY OPINION?**

\$75.00 per advertisement payable to the Kentucky Bar Association.

An additional supplemental fee of \$100.00 per advertisement is payable in addition to the filing fee if the advertisement is more than 100 pages or the audio or video is longer than ten minutes.

- **ARE THERE OTHER SUBMISSION REQUIREMENTS?**

Websites may be submitted on paper or on CD /DVD or flash drive in continuous PDF (Portable Document Format). If your website submission is more than a few pages in length and you are submitting a paper copy, the Commission requests that you number the pages consecutively from beginning to end to assist with the review. Every page is reviewed. Violations are often cited by page number.

Multiple video and audio advertisements may be submitted on a single VHS tape or CD or DVD, provided the order of the advertisements is clearly marked and each advertisement is saved separately. The video and/or audio advertisement saved on a CD or DVD should be saved in a format which permits downloading for review. See AAC Regulation No. 11 for more details.

Also, if the advertisement is more than 100 pages or the individual audio and/or video is longer than 10 minutes in length, an additional filing fee of \$100.00 is required.

ADVISORY OPINION: A \$75.00 filing fee is required for each advertisement. The advertisement must be submitted at least 30 days prior to publication or use. Requests for Advisory Opinions must be made in writing by an attorney. The cover letter must either state the rule number (SCR 3.130(7.03)) or specifically request an Advisory Opinion. The letter must be signed by an attorney.

The AAC will review the advertisement and provide an Advisory Opinion regarding compliance with the Rules and Regulations within 30 days of receipt of the submission. The advantage of submitting pursuant to this rule is that an Advisory Opinion is similar to an Ethics Hotline Opinion: if the advertisement is noncompliant, the attorney is not at risk for disciplinary action, unless a violation of SCR 3.130(7.10) was deemed intentional. In addition, if the Advisory Opinion does not deem the advertisement compliant and the Commission's recommendations are applied, the advertisement may be resubmitted without an additional filing fee.

- **WHAT DO I SEND TO THE COMMISSION?**

The Commission recommends submitting a cover letter requesting an Advisory Opinion with each submission specifying the type of advertisement(s), where and how the advertisement(s) will be used/published, the rule pursuant to which the submission(s) is being made, and any supplements further required by applicable Rules and/or Regulations (i.e., substantiation of any claim, verdict or settlement, any monetary award or recovery, or routine fee(s) and the services provided for said fee(s) as advertised).

You must submit three (3) copies of the advertisement. If the advertisement will be published by broadcast media, including radio, television or internet media, a fair and accurate representation of the advertisement is required. For broadcast media, this includes three (3) copies of a typed transcript in addition to three (3) copies of the audio or video. Websites must also include three (3) copies of the printed pages (page numbered consecutively from beginning to end) or three (3) copies of the data disc in continuous Portable Document Format (PDF). Acceptable media: VHS, CD, DVD, Flash Drive, or Audio Cassette. Fax or emailed files of the media are not accepted.

- **HOW LONG DOES IT TAKE TO GET AN ADVERTISEMENT REVIEWED?**

With an Advisory Opinion request pursuant to **SCR 3.130(7.03)**, the advertisement will be reviewed within 30 days of receipt.

- **MAY I SUBMIT AN ADVERTISEMENT BY FAX OR EMAIL OR THROUGH THE WEBSITE?**

No, because a filing fee is incurred the review process cannot begin until the KBA receives the advertisement via mail, along with a check for the required \$75.00 filing fee and other supplements as required (i.e., three copies of CD, DVD, transcript, etc.).

- **MAY I OBTAIN A PRELIMINARY APPROVAL BEFORE PRODUCING A RADIO OR TELEVISION ADVERTISEMENT?**

Yes. A preliminary approval based upon scripts and storyboards may be requested prior to production. Submission pursuant to **SCR 3.130(7.03)** and a request for an Advisory Opinion in writing by an attorney is required. However, the preliminary opinion will not cover any elements in the finished advertisement that were not indicated in the scripts and storyboards. Once a script or other preliminary advertising submission is approved, a final compliance notice will not be issued until the final audio or video media is submitted and reviewed for conformity with the script.

- **IF OUR FIRM'S BROCHURE OR A NEWSLETTER IS BEING MAILED OR EMAILED TO POTENTIAL CLIENTS WHO HAVE ASKED TO BE PUT ON OUR MAILING LIST, DO WE HAVE TO SUBMIT THE ADVERTISEMENT AND COMPLY WITH THE ADVERTISEMENT RULES FOR SOLICITATION OF CLIENTS (SCR 3.130(4.5))?**

Submission is only required if an Advisory Opinion is being sought pursuant to **SCR 3.130(7.03)**. Any information disseminated in this manner must strictly comply with **SCR 3.130(4.5)**. Advertisements which constitute solicitation by email or direct mail, must have the word "Advertising Material" on the envelope or somewhere in the subject line of an email to comply with **SCR 3.130(4.5)**. The submission copy should indicate conformity with the rule.

- **CAN I SUBMIT A LIVE RADIO OR TELEVISION PROGRAM FOR AN ADVISORY OPINION?**

No. Once the advertisement aired, an Advisory Opinion is not possible under the Rules. Please make sure your program complies with the Rules of Professional Conduct.

- **IF MY NEWSPAPER ADVERTISEMENT IS APPROVED, CAN I USE IT ON A BILLBOARD?**

Once an advertisement is submitted and reviewed, if compliant, you may use that advertisement as long as you want, in any format you want, as long as SCR 3.130(7.10) is not violated and there are no changes. A previously approved advertisement, when used in a different format (such as direct mail), must comply with any requirements of that format (i.e., the word “Advertising Material” on the mailing label side of an envelope or postcard). When using an older previously approved advertisement, the Commission encourages the advertisement be updated with new rule and/or regulation requirements.

Radio and TV advertisements use disclaimers in different ways (e.g., audio vs. visual). If using a previously approved advertisement in a new format, then any earlier Advisory Opinions may not apply. A request for a new Advisory Opinion will incur the \$75.00 filing fee. When submitting, the cover letter should reference the Advertisement ID number assigned to the previous advertisement.

- **MAY I ADVERTISE ON THE INTERNET?**

Internet advertisements and attorney/firm websites are advertisements and subject to all the rules and regulations applicable to other advertisements, including submission under SCR 3.130(7.03) when an Advisory Opinion is sought. This includes audio or video (accompanied by typed transcripts), classified advertisements for legal services (i.e., Craigslist), and other electronic advertisements.

Electronic mail advertisements, such as email, or other information directed toward the solicitation of clients must follow the requirements of SCR 3.130(4.5)(3) by stating “Advertising Material” somewhere in the subject line.

- **HOW DO I SUBMIT UPDATES TO MY WEBSITE?**

Resubmission is required only if an Advisory Opinion is sought pursuant to SCR 3.130(7.03) on the changes made to the website.

- **HOW DO I RESUBMIT CHANGES TO A NONCOMPLIANT ADVERTISEMENT?**

An advertisement submitted for an Advisory Opinion and found noncompliant may be corrected and resubmitted to the Attorneys’ Advertising Commission for review and receipt of an advisory opinion indicating compliance. When resubmitting an advertisement, the cover letter must identify the Advertisement ID number assigned to the advertisement.

When resubmitting an Advisory Opinion request, one (1) copy of the corrected advertisement must be resubmitted. There is no additional filing fee. If the resubmission is for a radio or television commercial, one (1) copy of the revised transcript and one (1) CD or DVD must be resubmitted with the required changes. If resubmitting a website and changes are required on just a few specific pages, one (1) copy of only the changed/corrected pages needs to be resubmitted. If the entire website is resubmitted, it is subject to a complete review again.

If the advertisement initially submitted for an Advisory Opinion request is used prior to the expiration of the 30 days specified in the rule, the advertisement may not be reviewed and no opinion issued. The filing fee will not be refunded.

If the advertisement submitted for an Advisory Opinion is initially found noncompliant, corrections that are submitted are subject to a new 30 day review period. During that time, the

corrected advertisement cannot be used until an Advisory Opinion indicating compliance is received.

Content/Required Disclaimers

- **DOES THE OFFICE LOCATION HAVE TO BE ON THE ADVERTISEMENT?**

Yes. See SCR 3.130(7.20)(3) and **AAC Regulation No. 1(C)**.

- **DO ALL ADVERTISEMENTS HAVE TO SAY "THIS IS AN ADVERTISEMENT"?**

No, **SCR 3.130(4.5)** requires if the advertisement is a written, recorded, or electronic communication for the solicitation of clients, the envelope or container must state the words "Advertising Material" on the mailing label side of the envelope or container.

In recorded telephone, electronic, video, or digital communications other than television, the speaker must first state "Advertising Material" and must further state at the end of the communication "Advertising Material" or some similar language indicating it is an advertisement.

The Commission may determine on a case-by-case basis those advertisements in which "Advertising Material" or some similar language may be deemed necessary to be included as part of the advertisement to avoid being misleading (e.g., mock interviews, paid articles/editorials, or other nontraditional advertisements).

- **WHY DO SOME ADVERTISEMENTS REQUIRE THE DISCLAIMER "SERVICES MAY BE PERFORMED BY OTHERS?"**

SCR 3.130-7.20(5) requires the disclaimer if a lawyer or law firm advertises for legal services and a lawyer's name or image is used to present the advertisement. The lawyer must be the actual lawyer who will perform the services. Otherwise, the disclaimer "Services may be performed by others" is required. The Commission may require the disclaimer "Services will be performed by others" when the lawyer in the advertisement is not licensed in Kentucky to perform the services offered. Often used in television or radio advertisements with an actual lawyer speaking, this may also include print advertisements with a picture of a single lawyer and a caption that says, "I will perform a particular service". If the lawyer whose name or image is not licensed in Kentucky, that fact shall also be disclosed.

In addition, if the lawyer or firm is advertising for clients who will be referred to another lawyer or firm, such fact shall be prominently disclosed.

- **CAN I ADVERTISE FEES OR DISCOUNTS?**

SCR 3.130(7.15) Advertising of fees

Yes. If the advertisement contains a fee for "routine services," a description of what services are included must be supplied to the Commission and to each prospective client upon request.

While advertising fees, costs and expenses is not prohibited, caution should also be taken to comply with **SCR 3.130(7.10)**, which prohibits false, deceptive or misleading information resulting from a misrepresentation of fact or law, or by omitting a fact necessary to make the statement considered as a whole not materially misleading. If your client will be expected to pay court costs and case expenses in some cases, it may be potentially misleading or deceptive to fail to include an additional explanation that litigation expenses and court costs would be payable regardless of the outcome. The public generally may not distinguish the difference between the terms "fee"

and “costs”. It may be deceptive to employ advertising that refers to contingent-fee arrangements without mentioning the client’s liability for court costs and case expenses.

Coupons, discounts, lowered rates.

Fees, services, and discounts advertised must be honored for as long as the advertisement is in use to comply with SCR 3.130(7.10). If the advertisement contains a price or discount that is valid only for a specific time, the advertisement must state such limitation. If a price is listed in yellow page advertisements or any other advertisement used in a media that is published only once a year, the price must be honored for at least one year. Please consult KBA Ethics Opinion E-369 for further guidance.

- **CAN I ADVERTISE MY AREAS OF PRACTICE?**

Yes. However, be particularly careful not to state or imply that one is “certified as a specialist in a particular field of law” unless the advertisement complies with SCR 3.130(7.40)(4).

- **MAY I ADVERTISE MY TOLL FREE NUMBER?**

If you advertise a toll free number, the advertisement must indicate the location of the bona fide office(s) where a substantial amount of the services will be performed. In addition, an advertisement must not include a telephone number in a manner that misrepresents the geographic location of the office where the advertised legal services will be performed. If an advertisement includes a telephone number with an area code for a geographic region in which the lawyer or law firm does not maintain a bona fide office, the advertisement must include a statement that the lawyer or law firm does not maintain an office within the area code indicated by the telephone number.

- **MAY I PARTICIPATE IN GROUP MARKETING?**

Group marketing plans implicate multiple rules of professional conduct, some outside of the specific advertising rules. Please consult KBA Ethics Opinion E-429 for further guidance.

- **MAY AN ATTORNEY SPONSER A SOFTBALL TEAM USING HATS AND SHIRTS WITH THE ATTORNEY OR FIRM NAME AND PHONE NUMBER?**

Yes, but do not require submission as advertisements unless an Advisory Opinion is sought pursuant to SCR 3.130(7.03). As an Advisory Opinion request, a \$75.00 filing fee is incurred, and the advertisement cannot be used during the review period. Submission of three copies of the actual item is acceptable, but pictures or drawings, and/or descriptions are allowed in this instance.

- **WHAT ARE THE MOST COMMON OVERSIGHTS IN AN ADVERTISEMENT?**

1. “Advertising Material” [SCR 3.130(4.5)]
2. Location of firm [SCR 3.130(7.20)(3)] and/or AAC Regulation No. 1(C)
3. Services may be performed by others [SCR 3.130(7.20)(5)]

Advertising Claims

- **MAY TESTIMONIALS BE USED?**

An advertisement may be in violation of SCR 3.130(7.10) if the advertisement fails to comply with the AAC Regulations.

AAC Regulation No. 1(D) states:

1. Testimonials. A testimonial is a statement by any person regarding the quality of legal services rendered by an advertising lawyer or law firm. Testimonials concerning the quality of legal services or the client's level of satisfaction that are stated in general terms and that do not make reference to a particular legal matter will ordinarily not be considered to create unjustified expectations. Testimonials are also subject to the requirements of subsection (D)(2) below.

2. Advertising that refers to particular matters or results. Statements that may create unjustified expectations include advertisements concerning results obtained on behalf of a client, such as the amount of damage award, cumulative verdicts or the lawyer's record in obtaining favorable verdicts unless the advertisement includes the specific factual and legal circumstances of the case. Such information might include some or all of the following: the facts underlying the representation, a statement of the applicable law, whether a matter has been concluded or continues on appeal, and a statement concerning any subsequent post-verdict settlement of the matter.

- **MAY I LIST VERDICT AND SETTLEMENT AMOUNTS IN MY ADVERTISEMENT?**
Attorney advertisements, including websites, often list verdict and settlement results. Listing results without a sufficient explanation may be a violation of **SCR 3.130(7.10)**. Information on advertising verdict and settlement amounts can be found in **AAC Regulation No. 1(D)(2)**.
- **MY LOCAL NEWSPAPER'S SURVEY VOTED ME "BEST LAWYER OF THE COUNTY." MAY I PUT THIS IN MY ADVERTISEMENT?**
OR
I AM LISTED IN "BEST LAWYERS OF AMERICA" or "CHAMBERS". CAN I PUT THIS INFORMATION IN MY ADVERTISEMENT?
Yes, provided it does not violate **SCR 3.130(7.10)**.
- **CAN I ADVERTISE THAT I WAS IN "BEST LAWYERS OF AMERICA", "CHAMBERS" OR A LOCAL NEWSPAPER SURVEY, AND THAT IT NAMED MY FIRM "THE BEST" IN THE COUNTY/REGION/STATE?**
Yes, provided it does not violate **SCR 3.130(7.10)**.

SOCIAL MEDIA

- **DO I NEED TO SUBMIT MY BLOG?**
You can submit your blog if you wish to get an Advisory Opinion regarding compliance with the Rules and Regulations.
- **MAY A LAWYER USE FACEBOOK, TWITTER, LINKEDIN OR OTHER SOCIAL MEDIA NETWORKING SITES?**
Yes, use of social media for personal, non-legal communications does not implicate the Supreme Court Rules as they relate to advertising. However, communications that meet the definition of an advertisement under **SCR 3.130(7.01)(1)** are subject to the Rules and Regulations regarding attorney advertising. At a minimum, if the communication is an advertisement, the "Information" or "About" page should comply with the advertising rules and regulations.
- **IF A LAW FIRM USES FACEBOOK, TWITTER, LINKEDIN OR OTHER SOCIAL MEDIA NETWORKING SITES, IS THAT AN ADVERTISEMENT?**

Yes, if the site meets the definition of an advertisement under **SCR 3.130(7.01)(1)**, then the use of that social media service is an advertisement. The firm may submit the “Information” or “About” page for compliance with the advertising rules and regulations, if an Advisory Opinion is sought pursuant to **SCR 3.130(7.03)** prior to the media site being published.

- **MAY A LAWYER USE SOCIAL MEDIA TO CONTACT A CURRENT OR POTENTIAL CLIENT?**

There are several factors to weigh in considering this question:

A lawyer may not initiate contact or solicit professional employment when a significant motive for the lawyer’s doing so is the lawyer’s pecuniary gain via real-time electronic means. **SCR 3.130(4.5)**. There are three limited exceptions to the prohibition, please see the rule. If the communication is not in real-time, it is permitted. However, the communication must comply with **SCR 3.130(4.5)(3)** and any other applicable advertising rules and regulations, and may be submitted to the Attorneys’ Advertising Commission pursuant to **SCR 3.130(7.03)** if an **Advisory Opinion is sought**.

Revised Effective January 2016