

Judges Propose Changes In Advertising Rules

BY LAZAR EMANUEL

The four Presiding Justices of the Appellate Divisions have issued their proposals for extensive changes in the Disciplinary Rules governing lawyer advertising and lawyer solicitations of clients. The proposals would amend DR 1-105(A), Disciplinary Authority; DR 2-101, Publicity and Advertising; DR 2-102, Professional Notices, Letterheads and Signs; and DR 2-103, Solicitation and Recommendation of Professional Employment. The proposals would also add a new DR 7-111, Communication After Incidents Involving Personal or Wrongful Death, and amend 22 NYCRR 130-1.1A regarding certification of pleadings and other filed documents.

The proposals can be found at www.nycourts.gov/rules/pro-posedamendments.shtml . Comments should be sent to Michael Colodner, Esq., Counsel, OCA, 25 Beaver Street, New York, NY 1004, not later than September 15, 2006. The proposed amendments will take effect on November 1, 2006.

As described in the Press Release announcing the new proposals, the amendments include:

- A 30-day moratorium on soliciting wrongful death or personal injury clients, to protect families suffering loss from overly aggressive marketing.
- A ban on using testimonials by current clients or paid endorsements.
- Restrictions on using statements likely to create an expectation about results or that compare the lawyer's services with those of other lawyers.
- New and expanded rules to cover computer and Internet-based advertising and solicitation, including restrictions on websites and e-mail, and bans on "pop-up" ads and chat-room solicitation.
- A ban on using nicknames, mottos or trade names that suggest an ability to obtain results.
- A requirement that ads stating "no fee will be charged if no money is recovered" disclose that client will remain liable for other expenses regardless of the outcome of the matter.
- The extension of advertising rules to cover out-of-state attorneys who solicit legal services in New York
- A requirement to include disclaimers in certain ads and to label certain communications as "advertisements."
- A ban on fictionalized portrayals of clients, judges and lawyers or re-enactments of events that are not authentic.
- A ban on depicting the use of a courtroom or courthouse.
- A requirement to file all advertisements for legal services, including radio and television ads, with the attorney disciplinary committees for review, and a requirement to translate all foreign-language ads into English before filing.

The Appellate Division proposals respond in part to recommendations of the NYSBA House of Delegates adopted in January 2006. The full text of the NYSBA proposals may be reviewed at www.nysba.org .