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1. Public reaction to lawyer advertising and solicitation arose in 2003 following a fatal accident involving:
  - a plane crash in the Borough of Queens
  - the Staten Island Ferry and its collision with a concrete pier
  - a major warehouse fire in Manhattan.
2. The NYSBA Committee on Mass Disaster Response urged the State Bar to:
  - advise against all solicitation of mass disaster victims by mail or phone
  - consider adopting a Florida rule limiting solicitation of accident victims for 30 days following the accident
  - ask the Courts to adopt a rule defining the term "mass disaster."
3. In response to the Courts' adoption of stringent rules governing lawyer advertising in 2007:
  - the State Bar asked the Courts to adopt the Bar's proposals instead
  - a committee of law firms handling personal injury claims petitioned the Courts to revise the rules on mass disasters
  - the Syracuse law firm of Alexander & Catalano challenged the rules in the federal courts.
4. Alexander & Catalano argued that the rules adopted by the Courts were:
  - prejudicial to firms handling personal injury claims
  - unconstitutional under the First Amendment
  - unfair to solo practitioners and small law firms.
5. Judge Scullin enjoined enforcement of the New York Courts' rules except for:
  - the 30-day blackout of targeted advertisements directed to the victims of mass accidents
  - any restrictions on depiction of a judge in a lawyer's advertising
  - ads containing testimonials from clients on matters still pending.
6. In affirming Judge Scullin's decision, the Second Circuit found that although the state's interest in advertising by lawyers was substantial:
  - the Court's rules were excessively vague and indefinite
  - the rules were not "narrowly tailored" as required by Central Hudson
  - the rules were prejudicial to lawyers specializing in personal injury claims.
7. Judge Calabresi emphasized that the Court's opinion did not prevent the NY Courts from:
  - adopting rules that would meet the requirements of Central Hudson
  - reviewing the rules on lawyer advertising of other states
  - appointing a special committee of judges with experience in personal injury litigation.
8. To help the Courts revise their rules on lawyer advertising, a Joint Report was prepared by:
  - the State Bar and the City Bar
  - COSAC and the State Bar's Task Force on Lawyer Advertising
  - COSAC and a committee of the American Association of Advertising Agencies.
9. The Joint Report recommended that the Courts drop those Rules that:
  - did not satisfy the standards of Central Hudson
  - were too vague or indefinite
  - could not be replaced by language likely to withstand First Amendment scrutiny other than by repeating the admonition against misleading advertisements.
10. The Joint Report recommended that the following provisions of Rule 7.1 (Advertising), be stricken:
  - Rule 7.1(b)(3) (bank references, etc.)
  - Rule 7.1(c) in its entirety
  - Rule 7.1(c)(1), (c)(5) and (c)(7), and Rule 7.1(g)(1).
11. The Courts' new amendments strike Rule 7.1(c)(1) dealing with client testimonials because:
  - the rule encompasses any testimonial, whether or not it is false, deceptive or misleading
  - the rule is excessively broad
  - the rule is prejudicial to a lawyer's former clients.

12. Roy Simon believes:
- rules which are stricken should be listed as [Reserved] instead of being renumbered
  - the renumbering of Rules distorts their history
  - the renumbering of Rules creates problems for lexicographers.
13. Rule 7.1(b)(2) provides that a lawyer's advertisement may list the names of clients regularly represented:
- provided the clients have given prior written consent
  - whether or not the client has given his consent
  - whether or not the client's matter has been terminated.
14. Under amended Rule 7.1 (3), an actor may portray a judge in a lawyer's ad, provided:
- the judge is not named or identified
  - the judge is not portrayed as a judge in a current litigation
  - the use is disclosed.
15. The Second Circuit struck Rule 7.1(c)(5) which enjoined the use of techniques irrelevant to the selection of counsel because:
- the techniques were not likely to mislead and would serve important communicative functions by attracting attention
  - the techniques were similar to techniques generally used in commercial advertising
  - the techniques were neither offensive nor objectionable.
16. The Second Circuit struck Rule 7.1(c)(7)'s prohibition against the use in advertisements of monikers, nicknames, mottos, and trade names because:
- law firms have an interest in promoting a name which will distinguish one firm from another
  - the Rule prohibited monikers and nicknames which were not actually misleading

- the use of mottos and trade names is a common ingredient in American commercial advertising.
17. The Defendants in *Alexander* argued that the prohibition in Rule 7(g)(1) of the use of pop-ups and pop-unders in computer advertising was constitutional because:
- their fleeting nature made control of their content excessively difficult
  - their eye-catching techniques made them excessively persuasive to viewers
  - controls over them would require an excessively complicated filing system.
18. In his conclusion, Roy Simon records his satisfaction with:
- the role of COSAC and the NYSBA Task Force in the amendments to Rule 7.1
  - the improvement in the relationship between the Courts and the State Bar
  - the provisions of Rule 7.1 as amended.
19. After reviewing the history of *Alexander* in the federal courts, we may conclude that rules controlling lawyer advertising are unconstitutional unless they enjoin statements which:
- are false, deceptive or misleading
  - compare a lawyer's services with the services of other lawyers
  - trace the history of the lawyer's involvement in other matters.
20. The First Amendment to the Constitution protects, in addition to freedom of speech:
- freedom of religion and of the press
  - the right of the people to bear arms
  - the right in criminal prosecutions to a public trial by jury.

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