



## Legal advertising changes pitched

By: Christian Moises, News Editor | May 25, 2007 | 0

NEW ORLEANS – Attorneys trying to attract clients could be forced to rethink their approach if the Louisiana Supreme Court changes the professional conduct rules that govern the way lawyers advertise.

The changes would include eliminating nicknames, car crashes in ads, showing judges and attorneys in a courtroom and attorneys portraying themselves as actors. Also, if an attorney is advertising in a certain locality, he or she would have to have an office in that locality;

"Essentially, these recommendations are meant to eliminate the hyperbolic ads," said Marta-Ann Schnabel, president of Louisiana State Bar Association. "We have an obligation to the public to keep discourse about getting a just result."

In June, the Louisiana State Bar Association rules committee will present 10 recommendations to its 240-member House of Delegates to change the way attorneys advertise.

If approved, the recommendations would go to the Supreme Court, and it could be until the fall that there's a ruling, Schnabel said.

Schnabel said lawyers' ads have evolved from the 1950s and '60s, when law was considered a gentleman's profession and attorneys were limited in what their letterhead and business cards could say.

"Then there were challenges to not being allowed to advertise, that it was a free speech issue. There developed then, in the '80s, a case that said you can't contain the commercial speech of lawyers, and what was born was lawyer advertising."

As a result, the rules of professional conduct were amended to eliminate control on any type of advertising.

"Now we're looking at issues like what should the public really know? Are we really serving the public by showing someone as a bulldog? Shouldn't we talk about the things clients should be considering in selecting a lawyer?" Schnabel said.

### State: Summer requires child labor law use

As the end of school approaches and the number of minors seeking summer jobs increases, the Louisiana Department of Labor is reminding employers of child labor laws.

Fred Preis, senior member of the labor and employment law section at Lemle & Kelleher law firm, said managing child labor laws can sometimes be tricky.

"(Child labor laws) are an issue because of the shortage of employees we have in the New Orleans area post-Katrina," Preis said.

Minors traditionally work in the retail and grocery industry, and employers really need to have appropriate records and keep abreast of when they're working.

That minors are motivated to make money during the summer can often lead to working as long as they can and forgetting to take breaks, he said.

"During the summer, we see a larger number of teenage workers entering the job market," said Labor Programs Director Lonnie Rogers. "Even though school may not be in session, child labor laws still must be followed by both the young employees and those who hire them."

Of the more than 68,000 employment certificates issued to young workers in 2006, almost 43 percent, or 29,240, were issued between May 1 and Aug. 31.

On nights before a day when school is not in session, 14- and 15-year olds can work as late as 9 p.m. while 16- and 17-year olds have no restrictions. However, minors must have an eight-hour rest period between work days.

State law prohibits workers younger than 18 from working in hazardous conditions, such as operating certain types of power-driven machinery, welding, roofing and performing demolition or wrecking work. Minors are also prohibited from working as delivery drivers.

Child labor laws also prevent minors younger than 14 from working, except under certain circumstances, and having a minor employment certificate on file with their employer before starting work.

## Few issues arise with lawyer advertising rules

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With restrictions on lawyer advertising on the books for a little more than five months, officials say the system is working and the majority of violations have been minor.

Chuck Plattsmier, chief disciplinary counsel for the Louisiana Supreme Court, said there have been about 20 investigations since the rules took effect Oct. 1 involving improper advertising.

"Many turned out to be very minor, and we were able to help solve the problems with out any disciplinary action being taken," Plattsmier said.

Disciplinary action could include a public reprimand, probation, suspension or even disbarment. A public reprimand includes a "scolding for the attorney as to their violation and being told not to let it happen again," Plattsmier said.

The violation would then be published the Louisiana State Bar Association's journal as well as the law firm's hometown newspaper.

There are some cases currently under investigation that will likely result in public reprimand, but Plattsmier did not disclose the names of the attorneys in those cases.

"We're all going to be interested in how the Supreme Court views violations of advertising since we don't have any prior case log to point to in Louisiana to tell us how to handle the violations," he said. "So when we go for enforcement, they will have to develop a body of jurisprudence to tell us what kind of sanctions are appropriate."

Most lawyers, Plattsmier said, are trying to follow the rules and are taking advantage of the state bar's service to make sure they are in compliance.

Richard Lemmler, the bar's ethics counsel, said the association has reviewed and issued opinions for more than 1,300 advertisements since the rules went into effect.

The majority of problems have been simple things lawyers are overlooking because they are not familiar with the rules, Lemmler said, adding that changes mark the first departure from the profession's advertising standards in more than 20 years.

"I won't say there aren't folks that are completely happy with the rules, but we're focusing on the educational aspects and helping them come along," he said. "Some lawyers have actually thanked the bar association for actually improving their advertising."

But there will always be some people who will push the envelope or think they can get by with advertising that is clearly deceptive and misleading and they won't get caught, Plattsmier said.

Judge Martin Feldman of the U.S. District Court for Eastern Louisiana ruled in August that the state can freely regulate ads that employ client testimonials, portray a judge or jury, "promise results" for clients or use mottoes that imply a lawyer's ability to "obtain results."

However, Feldman said a new rule limiting attorneys' use of celebrity endorsements violates the First Amendment and cannot be enforced by the state. He also struck down two rules governing Internet ads, which he said do not account for differences between ads on the Web and those on television and other "traditional media."

A group of lawyers, including attorney Morris Bart, unsuccessfully sued to block enforcement of the rules, claiming they impose unconstitutional restrictions on free expression. An appeal to that ruling is pending in the Fifth Circuit Court of Appeals.

**The Associated Press contributed to this report.**

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Personal injury attorney Morris Bart is one of the plaintiffs who appealed the constitutionality of legal advertising changes that took effect in October. (CityBusiness file photo)