

**Garden State CLE presents:**

## Barely Legal !

### Attorney Advertising in New Jersey



Lesson Plan

# Introduction – Development of Protected Commercial Speech

## 1942

**Commercial Speech not entitled to First Amendment Protection**

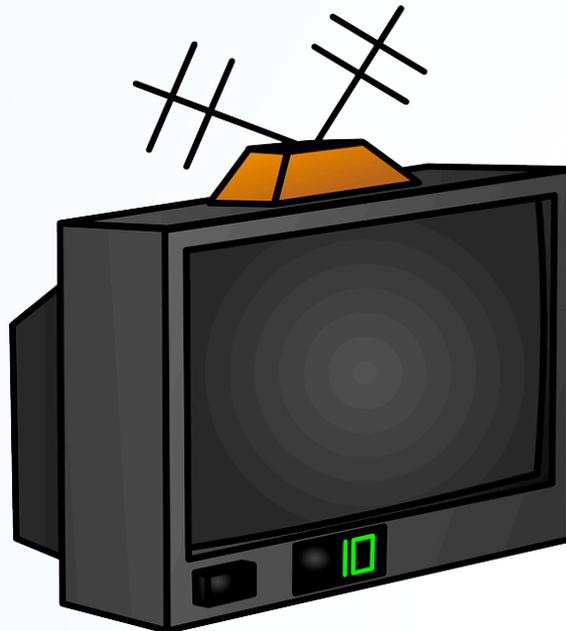
**[Valentine v. Chrestensen, 316 U.S. 52, 54 \(1942\)](#)** - While the First Amendment guards against government restriction of speech in most contexts, the Constitution imposes no such restraint on government as respects purely commercial advertising.



# 1976

Court provides protection for the first time to commercial speech.

In [Virginia Bd. of Pharmacy v. Virginia Citizens Consumer Council, Inc.](#), [425 U.S. 748 \(1976\)](#) - The recognized commercial speech as protected by the first amendment applicable to the states under the 14th Amendment. In this case, the Justices invalidated a state statute barring pharmacists from advertising prescription drug prices. At issue was prohibited commercial speech that involved the idea that “I will sell you the X prescription drug at the Y price.”



# 1977

**Commercial speech protections extended to attorney advertising - Fees & routine legal services**

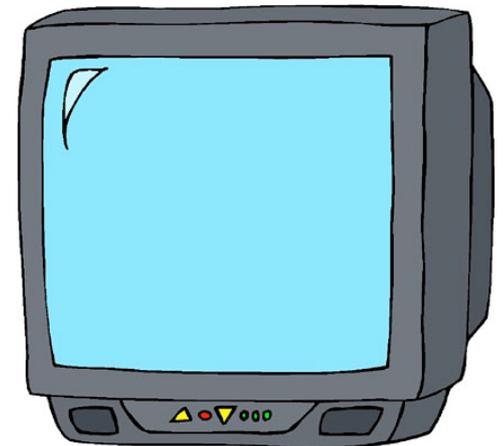
**[Bates v. State Bar of Arizona, 433 U.S. 350 \(1977\),](#)**

**The constitutional issue in this case is only whether the State may prevent the publication in a newspaper of appellants' truthful advertisement concerning the availability and terms of routine legal services. We rule simply that the flow of such information may not be restrained, and we therefore hold the present application of the disciplinary rule against appellants to be [a violation] of the First Amendment.**

**In holding that advertising by attorneys may not be subjected to blanket suppression, and that the advertisement at issue is protected, we, of course, do not hold that advertising by attorneys may not be regulated in any way. We mention some of the clearly permissible limitations on advertising not foreclosed by our holding.**

**Advertising that is false, deceptive, or misleading of course is subject to restraint. Since the advertiser knows his product and has a commercial interest in its dissemination, we have little worry that regulation to assure truthfulness will discourage protected speech. And any concern that strict requirements for truthfulness will undesirably inhibit spontaneity seems inapplicable because commercial speech generally is calculated. Indeed, the public and private benefits from commercial speech derive from confidence in its accuracy and reliability. Thus, the leeway for untruthful or misleading expression that has been allowed in other contexts has little force in the commercial arena.**

**As with other varieties of speech, it follows as well that there may be reasonable restrictions on the time, place, and manner of advertising. Advertising concerning transactions that are themselves illegal obviously may be suppressed. And the special problems of advertising on the electronic broadcast media will warrant special consideration.**

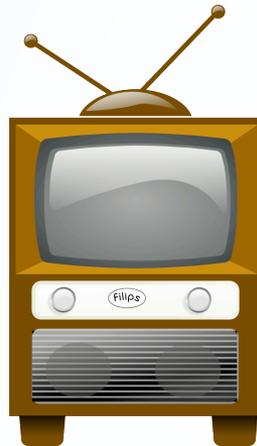


# 1978

**Face to face solicitation in P/I case**

**Ohralik v. Ohio State Bar Ass'n, 436 U.S. 447 (1978).**

**Appellant contends that his solicitation of the two young women as clients is indistinguishable, for purposes of constitutional analysis, from the advertisement in *Bates*. Like that advertisement, his meetings with the prospective clients apprised them of their legal rights and of the availability of a lawyer to pursue their claims. According to appellant, such conduct is “presumptively an exercise of his free speech rights” which cannot be curtailed in the absence of proof that it actually caused a specific harm that the State has a compelling interest in preventing. But in-person solicitation of professional employment by a lawyer does not stand on a par with truthful advertising about the availability and terms of routine legal services, let alone with forms of speech more traditionally within the concern of the First Amendment.**

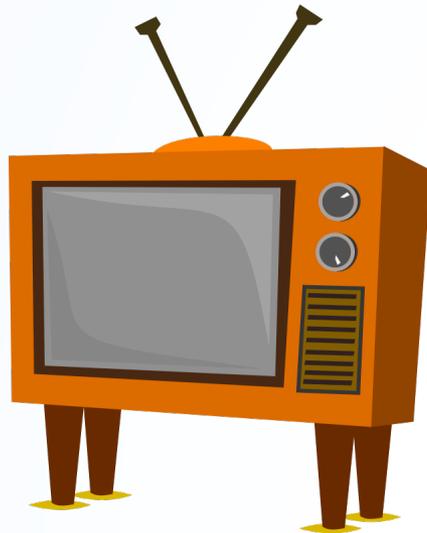


**A lawyer's procurement of remunerative employment is a subject only marginally affected with First Amendment concerns. It falls within the State's proper sphere of economic and professional regulation. While entitled to some constitutional protection, appellant's conduct is subject to regulation in furtherance of important state interests.**

**Because appellant's statements were not false or deceptive, our decisions impose on the State the burden of establishing that prohibiting the use of such statements to solicit or obtain legal business directly advances a substantial governmental interest.**

**Cross references to New Jersey law:**

**In re Pajerowski, 156 N.J. 509 (1998) (use of runners - disbarment).**



# 1980

**Three-part test for regulation of commercial speech - Intermediate scrutiny**

**Central Hudson Gas & Elec. Corp. v. Public Serv. Comm'n of N.Y., 447 U.S. 557 (1980).**

**A government may freely regulate commercial speech that concerns unlawful activity or is misleading. Such speech is not constitutionally protected. However, commercial speech that is neither related to unlawful activities nor misleading may be regulated if the government satisfies a test consisting of three related prongs:**

- 1.) the government must assert a substantial interest in support of its regulation;**
- 2.) the government must demonstrate that the restriction on commercial speech directly and materially advances that interest; and**
- 3.) the regulation must be narrowly drawn.**

**This is the test adopted and used in the context of attorney commercial speech.**

# 1982

**Application of three-part test to attorney advertising:**

**[In re R.M.J., 455 U.S. 191 \(1982\)](#)**

**The information lodged against appellant charged him with four separate kinds of violations:**

- 1.) listing the areas of his practice in language or in terms other than that provided by the Rule;**
- 2.) failing to include a disclaimer;**
- 3.) listing the courts and States in which he had been admitted to practice; and**
- 4.) mailing announcement cards to persons other than “lawyers, clients, former clients, personal friends, and relatives.” Appellant makes no challenge to the constitutionality of the disclaimer requirement, and we pass on to the remaining three infractions.**

**[The commercial] speech doctrine, in the context of advertising for professional services, may be summarized generally as follows: Truthful advertising related to lawful activities is entitled to the protections of the First Amendment. But when the particular content or method of the advertising suggests that it is inherently misleading or when experience has proved that in fact such advertising is subject to abuse, the States may impose appropriate restrictions. Misleading advertising may be prohibited entirely. But the States may not place an absolute prohibition on certain types of potentially misleading information, e.g., a listing of areas of practice, if the information also may be presented in a way that is not deceptive. Thus, the Court in *Bates* suggested that the remedy in the first instance is not necessarily a prohibition but preferably a requirement of disclaimers or explanation. Although the potential for deception and confusion is particularly strong in the context of advertising professional services, restrictions upon such advertising may be no broader than reasonably necessary to prevent the deception.**

**See RPC 7.4 . Communication of Fields of Practice and Certification**

# 1985

## **Zauderer v. Office of Disciplinary Counsel of Supreme Court of Ohio, 471 U.S. 626 (1985).**

**Newspaper with illustrations Dalkon Shield, fees and fee refund on dwi cases, prohibitions on soliciting legal business through advertisements containing advice and information regarding specific legal problems; restrictions on the use of illustrations in advertising by lawyers; and disclosure requirements relating to the terms of contingent fees**

**Because appellant's statements were not false or deceptive, our decisions impose on the State the burden of establishing that prohibiting the use of such statements to solicit or obtain legal business directly advances a substantial governmental interest**



**Were we to accept the State's argument in this case, we would have little basis for preventing the government from suppressing other forms of truthful and non-deceptive advertising simply to spare itself the trouble of distinguishing such advertising from false or deceptive advertising. The First Amendment protections afforded commercial speech would mean little indeed if such arguments were allowed to prevail. Our recent decisions involving commercial speech have been grounded in the faith that the free flow of commercial information is valuable enough to justify imposing on would-be regulators the costs of distinguishing the truthful from the false, the helpful from the misleading, and the harmless from the harmful.**

**The value of the information presented in appellant's advertising is no less than that contained in other forms of advertising-indeed, insofar as appellant's advertising tended to acquaint persons with their legal rights who might otherwise be shut off from effective access to the legal system, it was undoubtedly more valuable than many other forms of advertising. Prophylactic restraints that would be unacceptable as applied to commercial advertising generally are therefore equally unacceptable as applied to appellant's advertising. An attorney may not be disciplined for soliciting legal business through printed advertising containing truthful and non-deceptive information and advice regarding the legal rights of potential clients.**

# 1988

## **Shapero v. Kentucky Bar Ass'n, 486 U.S. 466 (1988)**

### **Targeted Direct-Mail solicitation**

**Like print advertising, petitioner's letter-and targeted, direct-mail solicitation generally-“poses much less risk of overreaching or undue influence” than does in-person solicitation. Neither mode of written communication involves “the coercive force of the personal presence of a trained advocate” or the pressure on the potential client for an immediate yes-or-no answer to the offer of representation. Unlike the potential client with a badgering advocate breathing down his neck, the recipient of a letter and the “reader of an advertisement can effectively avoid further bombardment of [his] sensibilities simply by averting [his] eyes. A letter, like a printed advertisement (but unlike a lawyer), can readily be put in a drawer to be considered later, ignored, or discarded. In short, both types of written solicitation conve[y] information about legal services [by means] that [are] more conducive to reflection and the exercise of choice on the part of the consumer than is personal solicitation by an attorney. Nor does a targeted letter invade the recipient's privacy any more than does a substantively identical letter mailed at large. The invasion, if any, occurs when the lawyer discovers the recipient's legal affairs, not when he confronts the recipient with the discovery.**

**Cross reference to New Jersey law:**

**In re Anis, 126 NJ 448 (1992).**

**RPC 7.3**

# 1995

## Florida Bar v. Went For It, Inc., 515 U.S. 618 (1995)

**Time limitations on targeted-direct mail solicitations- Decided under the 3-part  
*Central* test**

**Speech by professionals obviously has many dimensions. There are circumstances in which we will accord speech by attorneys on public issues and matters of legal representation the strongest protection our Constitution has to offer. This case, however, concerns pure commercial advertising, for which we have always reserved a lesser degree of protection under the First Amendment. Particularly because the standards and conduct of state-licensed lawyers have traditionally been subject to extensive regulation by the States, it is all the more appropriate that we limit our scrutiny of state regulations to a level commensurate with the “ ‘subordinate position’ ” of commercial speech in the scale of First Amendment values.**

**We believe that the Bar's 30-day restriction on targeted direct-mail solicitation of accident victims and their relatives withstands scrutiny under the three-pronged Central Hudson test that we have devised for this context.**

**The Bar has substantial interest both in protecting injured Floridians from invasive conduct by lawyers and in preventing the erosion of confidence in the profession that such repeated invasions have engendered. The Bar's proffered study, un-rebutted by respondents below, provides evidence indicating that the harms it targets are far from illusory. The palliative devised by the Bar to address these harms is narrow both in scope and in duration. The Constitution, in our view, requires nothing more.**

**RPC 7.3(b)(4) - the communication involves unsolicited direct contact with a prospective client within thirty days after a specific mass-disaster event, when such contact concerns potential compensation arising from the event**

**NJSA 2C:40A-5 - In addition to any other sanction that may be imposed by the Supreme Court, an attorney who violates the Rules of Professional Conduct promulgated by the Supreme Court of New Jersey by contacting an accident or disaster victim or an accident or disaster victim's relative, using means other than written communication, to solicit professional employment on the attorney's own behalf, and who acts with intent to accept money or something of value for his services, shall be guilty of a crime of the third degree.**

# Part II. New Jersey Law

## a.) The Rules of Court

### The Committee on Attorney Advertising (CAA) (Formed in July 1982)

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<http://njlaw.rutgers.edu/cgi-bin/ethics.cgi>

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- Go to the N.J. Ethics search page
- Go to the Advisory Committee on Professional Ethics Opinions
- Go to the Committee on Unauthorized Practice of Law Opinions
- Go to the Committee on Attorney Advertising

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#### Advisory Committee on Professional Ethics Opinions [\[back to top\]](#)

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Opinion No.: acp1 Issued: 1963-12-19  
Title: Confidential Communications Substitution Of Attorney  
[click here to get this case.](#)

Opinion No.: acp2 Issued: 1963-12-19  
Title: Substitution of Attorney  
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Opinion No.: acp3 Issued: 1963-12-19  
Title: Assignment Of Counsel - State Employees  
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Opinion No.: acp4 Issued: 1963-06-27  
Title: Conflict Of Interests Municipal Attorneys  
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Opinion No.: acp5 Issued: 1963-06-27  
Title: Conflict of Interests Municipal Prosecutors  
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Opinion No.: acp6 Issued: 1963-12-19  
Title: Conflict of Interest Action Against Former Client  
[click here to get this case.](#)

Opinion No.: acp7 Issued: 1963-07-25  
Title: Conflict of Interests Unlawful Practice of Law Closing Fees  
[click here to get this case.](#)

## **1:19A-2. Jurisdiction**

**(a) Advisory Opinions and Ethics Grievances.** The Advertising Committee shall have the exclusive authority to consider requests for advisory opinions and ethics grievances concerning the compliance of advertisements and other related communications with Rules of Professional Conduct 7.1 "Communications Concerning a Lawyer's Service," 7.2 "Advertising," 7.3 "Personal Contact with Prospective Clients" (excluding subsections (c), (d), (e) and (f)), 7.4 "Communication of Fields of Practice," and 7.5 "Firm Names and Letterheads," and with any duly approved advertising guidelines promulgated by the Advertising Committee with the approval of the Supreme Court.

**(b) Rules of Procedure.** The Advertising Committee shall, consistent with these Rules, establish procedures, publish forms and maintain records as required for its conduct.

**(c) Advertising Guidelines.** The Advertising Committee may adopt advertising guidelines consistent with the Rules of Professional Conduct set forth in section (a) and with these Rules, after affording the bar an opportunity to comment and after approval by the Supreme Court. Advertising guidelines may include by way of example, but not by way of limitation, disclosure requirements, restrictions beyond those set forth in RPC 7.2(a), time, place, and manner regulations, guidelines for determining the application of the "predominantly informational" and "extreme portrayal" requirements, and, generally, any guideline that the Advertising Committee deems either necessary or desirable in clarifying the application of the Rules governing advertisements and other communications within its jurisdiction. Upon adoption all advertising guidelines shall be published initially in the New Jersey Law Journal and New Jersey Lawyer.

**(d) Pre-publication Review.** The Advertising Committee may, in its discretion, require any attorney or firm or association of attorneys that has hired an advertising agency, public relations counsel, or entity providing assistance in connection with advertising or other related communications within the jurisdiction of the Advertising Committee, to submit to the Advertising Committee before publication for its approval, disapproval, or modification any series of advertisements or other communications within its jurisdiction, any advertising program, or any general public relations program.

**(e) Education.** The Advertising Committee may undertake such action as it deems necessary (1) to educate the public concerning rational means of selecting counsel and of determining whether counsel is needed, and (2) to educate the bar concerning the ethical limitations of attorney advertising.

**(f) Reports.** The Advertising Committee shall monitor the impact of all advertising and other communications within its jurisdiction to determine the extent to which existing Rules and guidelines achieve their goals and the extent to which there is any need for revision. Without limiting the Advertising Committee's observations in any way, it should specifically monitor the impact of all rules and advertising guidelines, as they exist from time to time, to determine if consumers are obtaining enough information about their need for lawyers and to aid them in the selection of lawyers, if price competition is being achieved, if damage to the qualities of the profession that serve society is occurring, and if consumers are being damaged through non-rational appeals.

The Advertising Committee shall submit to the Supreme Court an annual report, the first of which shall be filed on January 1, 1988. The first report of the Advertising Committee should report on the experience of New Jersey, as well as other states concerning attorney advertising. Prior to submitting its first annual report, the Advertising Committee shall conduct at least one public hearing on the desirability of retaining, revising, or repealing the then-existing advertising Rules or guidelines, or adopting any other proposed Rule on attorney advertising. Public hearings shall be held in subsequent years in the discretion of the Advertising Committee or as directed by the Supreme Court.

## **1:19A-3. Advisory Opinions**

**(a) Form of Inquiry.** All inquiries shall be addressed to the Secretary. The Advertising Committee shall accept inquiries from any member of the New Jersey bar. Inquiries shall be in writing and shall have appended to them a copy of the questioned advertisement or other related communication and shall contain a certificate that any opinion of the Advertising Committee will not affect the interests of the parties to any pending action. The inquiry shall be accompanied by a letter brief or brief citing the Rules of Court, Rules of Professional Conduct or Advertising Guidelines, if any, that are applicable, and shall state clearly the factual situation in detail and the inquirer's position as to the propriety of the advertisement or other related communication.

**(b) Disposition of Inquiries.** The Advertising Committee shall, so far as practical, act on an inquiry at its next meeting following receipt of the inquiry, provided that the inquiry is received by the Secretary at least ten business days prior to the Advertising Committee's meeting. In its discretion the Advertising Committee may authorize oral argument, which shall be electronically or stenographically recorded and may be transcribed. The Advertising Committee may, in its discretion, reconsider a prior decision (provided that the same is final) at any time, but a reversal or modification of a prior decision shall have prospective effect only.

All advisory opinions shall be given in writing to the inquirer. The decision shall state the Advertising Committee's determination as to whether the advertisement or other related communication is proper; it shall also briefly state the rationale that supports it and the rule or rules relied upon. The Advertising Committee may condition its approval by requiring any reasonable changes that are, in its opinion, necessary to conform with the Rules of Court, Rules of Professional Conduct or Advertising Guidelines, including, but not limited to, disclosure requirements, and time, place, and manner regulations.

**(c) Effect of Opinions; Publication.** An opinion approving an advertisement or other communication shall, until and unless revised in accordance with section (d) or reconsidered, be a bar to prosecution of ethical charges against the lawyer or law firm, except for a prosecution based on a charge that it is false or misleading in violation of RPC 7.1(a)(1). An opinion disapproving an advertisement or other related communication shall, until and unless revised in accordance with section (d) or reconsidered, be binding upon the inquirer and anyone with actual or constructive knowledge thereof so that such use of a disapproved advertisement or other related communication shall be per se unethical conduct.

When the Advertising Committee believes it to be in the best interest of the bar or the public, it may publish its opinion in the New Jersey Law Journal and New Jersey Lawyer. Published opinions shall constitute constructive notice to, and shall be binding on, all members of the bar and in connection with any ethics proceedings, unless revised pursuant to section (d) or reconsidered.

**(d) Petition for Review.** Any aggrieved member of the New Jersey bar may seek review of any final action of the Advertising Committee relating to requests for advisory opinions in accordance with R. 1:19-8.



## **b.) Rules of Professional Conduct**

### **RPC 7.1 - Communications Concerning a Lawyer's Service**

**(a) A lawyer shall not make false or misleading communications about the lawyer, the lawyer's services, or any matter in which the lawyer has or seeks a professional involvement. A communication is false or misleading if it:**

**(1) contains a material misrepresentation of fact or law, or omits a fact necessary to make the statement considered as a whole not materially misleading;**

**(2) is likely to create an unjustified expectation about results the lawyer can achieve, or states or implies that the lawyer can achieve results by means that violate the Rules of Professional Conduct or other law;**

**(3) compares the lawyer's services with other lawyers' services, unless (i) the name of the comparing organization is stated, (ii) the basis for the comparison can be substantiated, and (iii) the communication includes the following disclaimer in a readily discernable manner: "No aspect of this advertisement has been approved by the Supreme Court of New Jersey"; or**

**(4) relates to legal fees other than:**

**(i) a statement of the fee for an initial consultation;**

**(ii) a statement of the fixed or contingent fee charged for a specific legal service, the description of which would not be misunderstood or be deceptive;**

**(iii) a statement of the range of fees for specifically described legal services, provided there is a reasonable disclosure of all relevant variables and considerations so that the statement would not be misunderstood or be deceptive;**

**(iv) a statement of specified hourly rates, provided the statement makes clear that the total charge will vary according to the number of hours devoted to the matter, and in relation to the varying hourly rates charged for the services of different individuals who may be assigned to the matter;**

**(v) the availability of credit arrangements; and**

**(vi) a statement of the fees charged by a qualified legal assistance organization in which the lawyer participates for specific legal services the description of which would not be misunderstood or be deceptive**

**(b) It shall be unethical for a lawyer to use an advertisement or other related communication known to have been disapproved by the Committee on Attorney Advertising, or one substantially the same as the one disapproved, until or unless modified or reversed by the Advertising Committee or as provided by Rule 1:19A-3(d).**

# **RPC 7.2 - Advertising**

**(a) Subject to the requirements of RPC 7.1, a lawyer may advertise services through public media, such as a telephone directory, legal directory, newspaper or other periodical, radio or television, internet or other electronic media, or through mailed written communication. All advertisements shall be predominantly informational. No drawings, animations, dramatizations, music, or lyrics shall be used in connection with televised advertising. No advertisement shall rely in any way on techniques to obtain attention that depend upon absurdity and that demonstrate a clear and intentional lack of relevance to the selection of counsel; included in this category are all advertisements that contain any extreme portrayal of counsel exhibiting characteristics clearly unrelated to legal competence.**

**(b) A copy or recording of an advertisement or written communication shall be kept for three years after its dissemination along with a record of when and where it was used.**

**(c) A lawyer shall not give anything of value to a person for recommending the lawyer's services, except that: (1) a lawyer may pay the reasonable cost of advertising or written communication permitted by this Rule; (2) a lawyer may pay the reasonable cost of advertising, written communication or other notification required in connection with the sale of a law practice as permitted by RPC 1.17; and (3) a lawyer may pay the usual charges of a not-for-profit lawyer referral service or other legal service organization.**

## RPC 7.3. Personal Contact with Prospective Clients

(a) A lawyer may initiate personal contact with a prospective client for the purpose of obtaining professional employment, subject to the requirements of paragraph (b).

(b) A lawyer shall not contact, or send a written communication to, a prospective client for the purpose of obtaining professional employment if:

- (1) the lawyer knows or reasonably should know that the physical, emotional or mental state of the person is such that the person could not exercise reasonable judgment in employing a lawyer; or
- (2) the person has made known to the lawyer a desire not to receive communications from the lawyer; or
- (3) the communication involves coercion, duress or harassment; or
- (4) the communication involves unsolicited direct contact with a prospective client within thirty days after a specific mass-disaster event, when such contact concerns potential compensation arising from the event; or
- (5) the communication involves unsolicited direct contact with a prospective client concerning a specific event not covered by section (4) of this Rule when such contact has pecuniary gain as a significant motive except that a lawyer may send a letter by mail to a prospective client in such circumstances provided the letter:

(i) bears the word "ADVERTISEMENT" prominently displayed in capital letters at the top of the first page of text and on the outside envelope, unless the lawyer has a family, close personal, or prior professional relationship with the recipient; and

(ii) contains the following notice at the bottom of the last page of text: "Before making your choice of attorney, you should give this matter careful thought. The selection of an attorney is an important decision."; and

(iii) contains an additional notice also at the bottom of the last page of text that the recipient may, if the letter is inaccurate or misleading, report same to the Committee on Attorney Advertising, Hughes Justice Complex, P.O. Box 037, Trenton, New Jersey 08625.

(c) A lawyer shall not knowingly assist an organization that furnishes or pays for legal services to others to promote the use of the lawyer's services or those of the lawyer's partner, or associate, or any other lawyer affiliated with the lawyer or the lawyer's firm, as a private practitioner, if:

(1) the promotional activity involves use of a statement or claim that is false or misleading within the meaning of RPC 7.1; or

(2) the promotional activity involves the use of coercion, duress, compulsion, intimidation, threats, unwarranted promises of benefits, overreaching, or vexatious or harassing conduct.

(d) A lawyer shall not compensate or give anything of value to a person or organization to recommend or secure the lawyer's employment by a client, or as a reward for having made a recommendation resulting in the lawyer's employment by a client except that the lawyer may pay for public communications permitted by RPC 7.1 and the usual and reasonable fees or dues charged by a lawyer referral service operated, sponsored, or approved by a bar association.

(e) A lawyer shall not knowingly assist a person or organization that furnishes or pays for legal services to others to promote the use of the lawyer's services or those of the lawyer's partner or associate or any other lawyer affiliated with the lawyer or the lawyer's firm except as permitted by RPC 7.1. However, this does not prohibit a lawyer or the lawyer's partner or associate or any other lawyer affiliated with the lawyer or the lawyer's firm from being recommended, employed or paid by or cooperating with one of the following offices or organizations that promote the use of the lawyer's services or those of the lawyer's partner or associate or any other lawyer affiliated with the lawyer or the lawyer's firm if there is no interference with the exercise of independent professional judgment in behalf of the lawyer's client:

- (1) a legal aid office or public defender office:
  - (i) operated or sponsored by a duly accredited law school.
  - (ii) operated or sponsored by a bona fide nonprofit community organization.
  - (iii) operated or sponsored by a governmental agency.
  - (iv) operated, sponsored, or approved by a bar association.
  
- (2) a military legal assistance office.
  
- (3) a lawyer referral service operated, sponsored, or approved by a bar association.
  
- (4) any bona fide organization that recommends, furnishes or pays for legal services to its members or beneficiaries provided the following conditions are satisfied:
  - (i) such organization, including any affiliate, is so organized and operated that no profit is derived by it from the furnishing, recommending or rendition of legal services by lawyers and that, if the organization is organized for profit, the legal services are not rendered by lawyers employed, directed, supervised or selected by it except in connection with matters when such organization bears ultimate liability of its member or beneficiary.

(ii) neither the lawyer, nor the lawyer's partner or associate or any other lawyer or nonlawyer affiliated with the lawyer or the lawyer's firm directly or indirectly who have initiated or promoted such organization shall have received any financial or other benefit from such initiation or promotion.

(iii) such organization is not operated for the purpose of procuring legal work or financial benefit for any lawyer as a private practitioner outside of the legal services program of the organization.

(iv) the member or beneficiary to whom the legal services are furnished, and not such organization, is recognized as the client of the lawyer in the matter.

(v) any member or beneficiary who is entitled to have legal services furnished or paid for by the organization may, if such member or beneficiary so desires, and at the member or beneficiary's own expense except where the organization's plan provides for assuming such expense, select counsel other than that furnished, selected or approved by the organization for the particular matter involved. Nothing contained herein, or in the plan of any organization that furnishes or pays for legal services pursuant to this section, shall be construed to abrogate the obligations and responsibilities of a lawyer to the lawyer's client as set forth in these Rules.

(vi) the lawyer does not know or have cause to know that such organization is in violation of applicable laws, rules of court and other legal requirements that govern its legal service operations.

(vii) such organization has first filed with the Supreme Court and at least annually thereafter on the appropriate form prescribed by the Court a report with respect to its legal service plan. Upon such filing, a registration number will be issued and should be used by the operators of the plan on all correspondence and publications pertaining to the plan thereafter. Such organization shall furnish any additional information requested by the Supreme Court.

(f) A lawyer shall not accept employment when the lawyer knows or it is obvious that the person who seeks the lawyer's services does so as a result of conduct prohibited under this Rule.



## RPC 7.4. Communication of Fields of Practice and Certification

(a) A lawyer may communicate the fact that the lawyer does or does not practice in particular fields of law. A lawyer may not, however, state or imply that the lawyer has been recognized or certified as a specialist in a particular field of law except as provided in paragraphs (b), (c), and (d) of this Rule.

(b) A lawyer admitted to engage in patent practice before the United States Patent and Trademark Office may use the designation "Patent Attorney" or a substantially similar designation.

(c) A lawyer engaged in admiralty practice may use the designation "Admiralty," "Proctor in Admiralty," or a substantially similar designation.

(d) A lawyer may communicate that the lawyer has been certified as a specialist or certified in a field of practice only when the communication is not false or misleading, states the name of the certifying organization, and states that the certification has been granted by the Supreme Court of New Jersey or by an organization that has been approved by the American Bar Association. If the certification has been granted by an organization that has not been approved, or has been denied approval, by the Supreme Court of New Jersey or the American Bar Association, the absence or denial of such approval shall be clearly identified in each such communication by the lawyer.

## c.) Case Law

In re Felmeister, 95 NJ 431 (1984) (Radio Advertising banned)

[In re Felmeister & Isaacs, 104 N.J. 515, 529-530 \(1986\)](#)

Despite the foregoing, we have decided to continue more substantial restrictions on television advertising. There is no doubt that the potential impact of irrational factors is greatest in that medium. See *Matter of Felmeister*, 95 N.J. 431, 440-41, 471 A.2d 775 (1984). Furthermore, the group that has the least access to informed sources on attorney skills and might rely most heavily on television for information, the less-affluent, less-educated public, is the most vulnerable to this kind of ad. The other side of the coin is that such restrictions will impair the effectiveness of the ad and perhaps thereby reduce some of the benefit that attorney advertising might have for this income group, whose needs for information about legal services are greater than those of other groups. We continue the restriction in the case of television advertising subject to the future evaluation provided for in this opinion. We will learn in time through our experience (in dramatizations on radio, for example) about the effectiveness and ineffectiveness of attorney advertising with and without emotional appeal, as well as their potential for harm. Our conclusion is ultimately based upon the belief that the risk may be substantial and that our duty is to protect the public against it. We believe that whatever loss there may be in effectiveness is worth the advantages of protecting the public from that risk during a trial period.

**There is one other kind of ad that our regulation addresses. Although probably few in number, since we believe there are very few attorneys who would run such an ad even if it were permitted, its adverse impact can be substantial. We refer to the kind of advertisement whose attention-getting technique depends upon its absurdity, its clear and intentional lack of relevance to the selection of counsel. It is different from the ad that has an irrational component designed to supplement a rational factual message. The type of ad referred to here has a “shock” quality in its absurdity. For example, the overweight man emerging from a swimming pool with a scuba diver outfit on, who announces that he is Lawyer Smith and that “this” (then pulling a somewhat overweight woman out of the water to join him) is his receptionist, produces not only interest but a laugh and, often enough, a smirk.**

**The serious viewer wonders why an attorney thinks someone would be interested in his services based upon such an ad; indeed the scene is so patently unrelated to any qualities that rationally relate to the attorney's competence as to cause the viewer to wonder what that attorney thinks of the public. Ultimately this effort to obtain clients through such a patently irrational appeal gives one cause to question the competence of both the attorney who ran the ad and the court that allowed it. In short, such an ad has the potential for bringing both the bar and bench into disrepute.**

## **In re Anis, 126 N.J. 448,459 (1992)**

**Dear Mr. Lowenstein:**

**Initially, we would like to extend our deepest sympathy for the loss of your son, Mr. Alexander Lowenstein. We know that this must be a very traumatic experience for you, and we hope that you, along with your relatives and friends, can overcome this catastrophe which has not only affected your family but has disturbed the world.**

**As you may already realize, you have a legal cause of action against Pan American, among others, for wrongful death due to possible negligent security maintenance. If you intend to take any legal recourse, we urge you to consider to retain our firm to prosecute your case.**

**Both my partner [Fady] and myself are experienced practitioners in the personal injury field, and feel that we can obtain a favorable outcome for you against the airline, among other possible defendants.**

**We would also like to inform you that if you do decide to retain our services, you will *not* be charged for any attorneys fees unless we collect a settlement or verdict award for you.**

**Before retaining any other attorney, it would be worth your while to contact us, since we will substantially reduce the customary one-third fee that most other attorneys routinely charge.**

**Please call us to schedule an appointment at your earliest convenience. If you are unable to come to our office, please so advise us and we will have an attorney meet you at a location suitable to your needs.**

**We have recognized the attorneys' right to distribute truthful, non-deceptive advertising of their services. Indeed, lawyer advertising may provide alternative avenues of relief to members of the public who are unaware of the legal options available to them. Even in cases of mass disaster, general public notices in affected regions might serve that end without the offensive intrusiveness of a targeted solicitation.**

**Nothing in the Constitution, however, requires us to countenance solicitation that intrudes upon victims or their families in the initial throes of their grief. In imposing discipline for such conduct, we wish to make it clear that we do not seek to convert into constitutional doctrine some sort of an effete etiquette for lawyers nor even a disguised version of the previously-disapproved standard of dignity for attorney advertising. What we are talking about here, as is our concurring member, is conduct that is patently offensive to the common sensibilities of the community because it intrudes upon the private grief of victims or their families, serves only to compound their sorrow, and solicits representation of them at a moment of their extreme vulnerability.**

## **In re Ravich, 155 N.J. 357, 364-365 (1998).**

**[The TEAM LAW Case]**

**The evils of in-person solicitation for pecuniary gain after an accident extend beyond intrusion upon private grief and tarnishment of the legal profession. Such solicitation presents an opportunity for “fraud, undue influence, intimidation, overreaching, and other forms of vexatious conduct.” “[I]n-person solicitation may exert pressure and often demands an immediate response, without providing an opportunity for comparison or reflection The “aim and effect of in-person solicitation may be to provide a one-sided presentation and to encourage speedy and perhaps uninformed decision-making; there is no opportunity for intervention or counter-education by agencies of the Bar, supervisory authorities, or persons close to the solicited individual.” *Ibid.* “In-person solicitation is as likely as not to discourage persons needing counsel from engaging in a critical comparison of the ‘availability, nature, and prices of legal services.’ That such overreaching in-person solicitation in fact occurred in this case is evidenced by the fact that many of the clients initially procured by the respondents decided, when given sufficient time to reflect, that their best interest lay in representation elsewhere.**

**Further, a lawyer who engages in personal solicitation of clients may be inclined to subordinate the best interests of the client to his own pecuniary interests. Even if unintentionally, the lawyer's ability to evaluate the legal merit of his client's claims may falter when the conclusion will affect the lawyer's income. A valid claim might be settled too quickly, or a claim with little merit pursued beyond the point of reason. These lapses of judgment can occur in any legal representation, but [the court] cannot say that the pecuniary motivation of the lawyer who solicits a particular representation does not create special problems of conflict of interest.**



## **In re Hyderally, 208 N.J. 453, 461-462 (2011)**

**Notwithstanding our decision on the record of this case, we remind the Bar that attorneys are responsible for monitoring the content of all communications with the public—including their websites—to ensure that those communications conform at all times with the Rules of Professional Conduct. No attorney who has not complied with the requirements of *Rule 1:39* should display the New Jersey Supreme Court Certified Attorney seal on a website, in other advertising, on letterhead or in any other form of communication, or otherwise state or imply that he or she has been certified pursuant to *Rule 1:39*. Prospectively, attorneys who are not authorized by *Rule 1:39* to utilize the New Jersey Supreme Court Certified Attorney seal, but who display that seal on their websites or in other communication, will be subject to appropriate discipline. Whether a website is created by an outside consultant or developed and maintained by an attorney or his or her staff, all language and design that appears on it should be reviewed frequently for compliance with *Rule 1:39* and all Rules of Professional Conduct.**

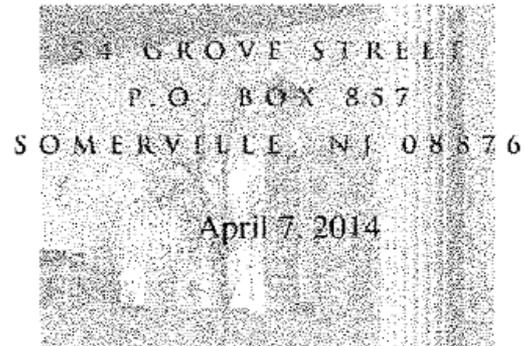
# **Part III. Sample Advertisements**

## **a.) Direct Response - Mailing**



# RICHARD R. USLAN

A PROFESSIONAL CORPORATION  
ATTORNEY AT LAW



TELEPHONE: (908) 725-1200  
FACSIMILE: (908) 725-3425  
E-MAIL: [richu@iddefendyou.com](mailto:richu@iddefendyou.com)  
WEBSITE: [www.iddefendyou.com](http://www.iddefendyou.com)  
[www.idfendu.com](http://www.idfendu.com)

ADMITTED TO  
NJ AND NY BAR

Robert Ramsey  
50 Main Street  
Anytown, New Jersey 00001

## ADVERTISEMENT

Re: State of New Jersey vs. Robert E. Ramsey  
Lawrence Township Municipal Court

Dear Mr. Ramsey:

There is a pending charge issued against you for allegedly **Driving without Automobile Insurance**. In New Jersey, this is a very serious offense. You face significant, mandatory loss of driving privileges and under some circumstances, mandatory jail and potential community services obligations. I have posted an article on my website that indicating why you may face greater penalties for this, than even a first conviction for Drunk Driving. A ticket for Driving without Automobile Insurance is often accompanied by a summons for having no Registration or a valid Driver's License. Depending upon your driving history, you may be exposed to collateral consequences *after* you leave courtroom that can be financially costly or result in a suspension of driving privileges. **I can help you!** I have been an attorney for 35 years, and limit my practice to representing individuals charged with serious motor vehicle offenses and crimes.

To see what former clients are saying about the legal services rendered to them by this office in their cases, log on to <http://www.lawyerratingz.com/ratings/9094/Lawyer-Richard-Uslan.html>. If, however, you are already represented by counsel in this matter, you may disregard this advertisement.

I am a frequent lecturer to attorneys and Judges in DWI legal seminars throughout the State. **I have been recognized for creating a unique DWI Defense.** The ABC TV Network News Magazine, "Nightline", interviewed me to discuss it in a feature that aired on August 14, 2012 entitled "Sleep Driving: Growing Hazard on the Road". It is an entertaining, alarming and informative piece. You can hear the entire segment, and other informative videos on my website: [www.idefendyou.com](http://www.idefendyou.com) Additionally, I urge you to go on to my *youtube* channel: "Idfendu", for information that will certainly be helpful to you.

I did not obtain information about your pending case from an automated, impersonal mailing list. Rather, **I personally selected your case as permitted by R. 1.38 and am extending an offer to meet with me** and evaluate my years of experience as an attorney.

Geographically, New Jersey is a small State; consequently, I have appeared in hundreds of criminal and municipal courts on behalf of my clients in North, Central and South Jersey. It is not the proximity of the attorney's office to a given court that is as important as the attorney's knowledge, reputation and experience.

**FOR YOUR FREE OFFICE CONSULTATION CALL IMMEDIATELY 24/7!  
SE HABLA ESPAÑOL**

Sincerely yours,  
RICHARD R. USLAN, P.A.  
*Richard R. Uslan*

Before making your choice of attorney, you should give this matter careful thought. The selection of an attorney is an important decision. If you believe that this letter is inaccurate or misleading, you may report same to the Committee on Attorney Advertising, Hughes Justice Complex, P.O.

Box 037, Trenton, New Jersey 08625.

**I D F E N D U**® against criminal charges, DWI, traffic offenses and driver's license problems

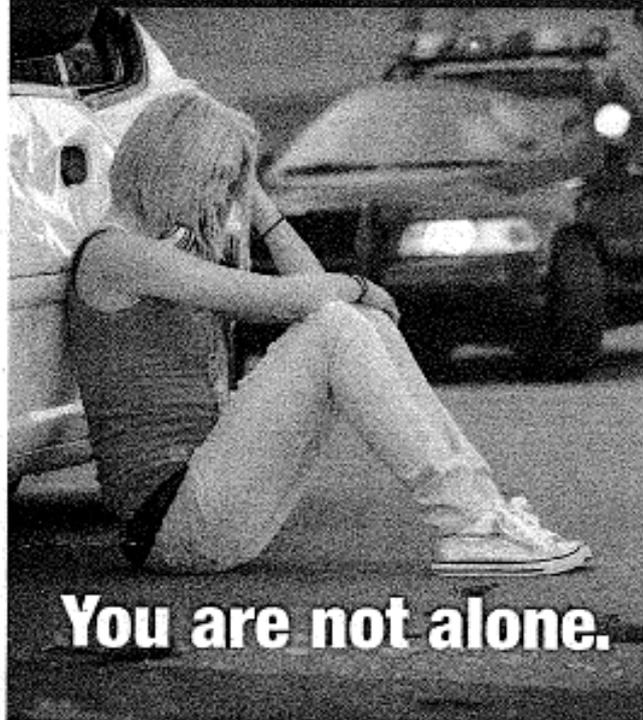
IDFENDU is a registered trademark of Richard R. Uslan

# Part III. Sample Advertisements

## b.) Newspaper



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ATTORNEYS AT LAW



**You are not alone.**

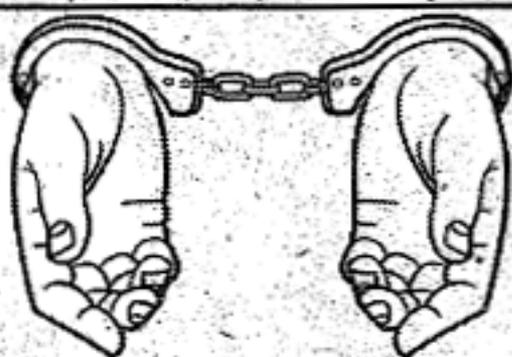
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Traffic Offenses  
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DWI**

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FOR A FREE CONSULTATION

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A LIMITED LIABILITY CORPORATION





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**WE WILL HELP YOU!**

**DONINI & RAMSEY**

**Attorneys-at-Law**

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609-396-7979

# Part III. Sample Advertisements

## c.) Television





**Jamie Casino**



**STARK & STARK**  
ATTORNEYS AT LAW

**1-800-INJURED** [StarkInjuryGroup.com](http://StarkInjuryGroup.com)

Princeton • Philadelphia • Marlton • Yardley • Bristol • Woodstown

993 Lenox Dr. Lawrenceville, NJ

**Stark & Stark**



**Allen Rothenberg**



**Allen Rothenberg**



**Allen Rothenberg**

**ALL ACCIDENTS**  
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**SLIP & FALLS**  
**WORKERS' COMPENSATION**  
**SOCIAL SECURITY**  
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**1-800-90-LEGAL**

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**Rand Spear**



**Relion Group**



**Rottenstein Law Group**



**Wapner-Newman**

Patients of **Dr. Nikita Levy**

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Call Saiontz & Kirk Right Now!

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State Minimum Coverage,  
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### Attorney Advertising in New Jersey



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