

# Long Island Business NEWS

## Attorney Advertising Rules Put New Spin On Sales Pitch

By Claude Solnik

New advertising regulations are changing the way attorneys make their case in the court of public opinion.

The new rules, which went into effect in February, restrict what law firms can say and how they say it in ads and marketing materials.

Now more than ever before, advertising is peppered with disclaimers and clarifications.

Some of the new regulations: Make it clear that prior performance doesn't guarantee future results. And if an actor is in an ad - it must be made clear the person is a paid performer.

Lawyers must include the words "attorney advertising" in subject matter lines for e-mails and on materials designed to market services, such as brochures and Web sites.

Other regulations restrict ways, and even times, at which attorneys can communicate with prospective clients, barring solicitations within 30 days of an event such as a car accident.

**Leslie Berkoff, partner at Moritt Hock Hamroff & Horowitz in Garden City, said some of the regulations make sense. "You shouldn't be able to say, 'I'm the best lawyer in America' and mislead the public," Berkoff said.**

But Shari Claire Lewis, partner at Uniondale-based Rivkin Radler, said rules created a huge gray area.

"There are a lot of dos and don'ts," Lewis said. "Nobody has an understanding of what this law means. Everybody is interpreting it in their own way."

**Berkoff said the rules, which are**

**being challenged in several lawsuits, are likely to be clarified over time.**

**"There's going to be confusion," Berkoff said.**

Firms are barred from using images in advertising that imply claims that can't be substantiated. Apparently you can't use a superhero as your symbol.

Lewis said superheroes do not have anything to do with "the actual practice of law." **Berkoff worries there will be a chill on law firm marketing, as rules force literal rather than metaphorical speech.**

Flo Federman, spokeswoman for accounting firm Holtz Rubenstein Reminick in Melville, said professional firms need to have leeway.

"It's not a law brief," Federman said. "You shouldn't be lying in an advertisement. But you shouldn't be stifling creativity."

Douglas Good, president of the Nassau County Bar Association and partner at Ruskin Moscou Faltischek in Uniondale, does see some wiggle room.

"I don't think they're an attempt to stifle creativity and cleverness," Good said. "The dynamic is between the First Amendment and truth in advertising."

Whether or not the regulations are killing creativity is up to debate. One thing seems for sure - the rules are affecting choices. **As it prepared a new marketing campaign, Moritt Hock discarded slogans it liked.**

**"It's affected us in terms of how we pick a tag line," Berkoff said, adding that a few tag lines were tossed from the discussion because**

**"we didn't think we could say that."**

Law firms with slogans such as "proven results" are weighing whether that falls within guidelines.

It also isn't clear whether seminars are considered an attempt to solicit clients, which would affect how they're regulated.

Ruskin, Moscou has already found that putting "attorney advertisement" in e-mail subject lines reduced effectiveness. Good said recipients are filtering out e-mails because of that word.

Law firm newsletters and other information can end up in a spam filter, even if the recipient might be interested.

"We don't get the penetration we used to get," Good said.