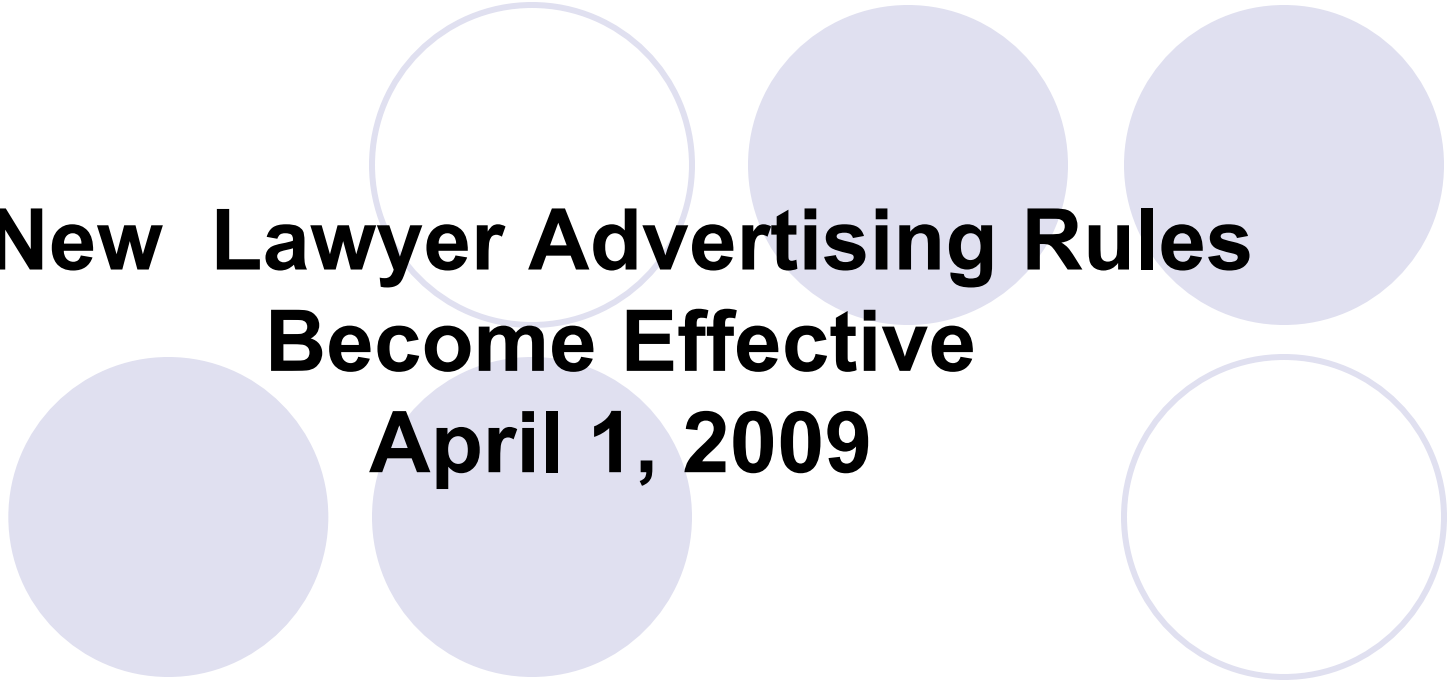




# **ARE LOUISIANA'S NEW LAWYER ADVERTISING RULES CONSTITUTIONAL?**

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SeminarWeb, LAJ  
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**New Lawyer Advertising Rules  
Become Effective  
April 1, 2009**

# **2006 Senate Concurrent Resolution**

- LSBA Study**
- Recommendations of  
LSBA Delegates**
- Court Committee Chaired  
by Justice Kimball**

# **Balance**

- **Right of lawyers to truthfully advertise legal services**

**v.**

- **Erosion of the public confidence in the judicial system**

- **Protect the public from misleading advertising**

- **Preserve the integrity of the profession**

# **New York's advertising rules enjoined**

- **Attention-getting techniques**
- **Ads that portray a fictitious law firm**
- **A nickname or motto**
- **Client testimonials**
- **Pop-up ads on the lawfirm's website**

# Central Hudson

**To constitutionally constrain speech the State must:**

**Identify a substantial state interest to be achieved by the restriction;**

**1. Demonstrate that the restriction materially advances the state interest; and**

**2. Establish that the restriction is narrowly drawn.**

# Florida Complaint -- Declarative and Injunctive Relief

**Challenges nine content-based restrictions in advertising rules that prohibit “unquantifiable” statements or mere opinions.**

# One federal case approves advertising restrictions

**Prohibition against direct-mail solicitations to victims and relatives for 30 days following accident.**

*Florida Bar v. Went For It, Inc.* U.S. Sup. Ct.



# **Absolute bans are highly suspect**

- No U. S. Supreme Court support for a complete ban on radio and television advertising.**
- Such advertising is not inherently misleading commercial speech under Central Hudson.**

# Can Louisiana advertising rules ban:

• **Testimonials and endorsements**

• **Slogans**

• **Illustrations or pictures**

# Testimonials

- **Ohio – suspended enforcement of anti-testimonial rule because of First Amendment violation**
- **New Mexico – successful 1983 action against New Mexico Supreme Court ban on testimonials**
- **Connecticut – client quotations do not violate 7.1**
- **New Jersey – total ban is unjustified**

# Slogans

**The Florida Supreme Court dismissed disciplinary charges against a lawyer who used a target mail brochure, “The Ticket Clinic.”**

# Illustrations or pictures

- **The U.S. Sup. Ct. has held that the use of illustrations or pictures in lawyer advertising is not inherently misleading.**
- **Lawyers can use accurate and non-deceptive illustrations in their advertisements.**

*Zauderer v. Office of Disciplinary Counsel of the Ohio Supreme Court*

417 U.S. 626 (1985)

# Rewriting the rules



## **Rule 7.2      Communications Covering a Lawyer's Services**

# Rewriting the rules



## **Rule 7.5      Advertisements In The Electronic Media Other Than Computer-Accessed Communications**

# Rewriting the rules

**Rule 7.4**  
**Prospective Clients**

**Direct Contact With**

**Clients**

