

Legal Ethics and Lawyer Marketing

October 2025

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(701) 801-6121

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- If problems persist, contact Paige Tungate at <u>ptungate@DowneyLawGroup.com</u>
- Watch the slides at https://join.freeconferencecall.com/downeycle
- <u>Download</u> the slides at http://www.downeyethicscle.com/
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CLE Information

- <u>Kansas Credit</u> If you are seeking Kansas credit, you will need to enter the <u>two Attendance Verification Words</u> and your Kansas Bar information into the <u>Program Survey</u>
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 - 1. Link available in the CHAT (right now)
 - 2. Link at the end of the slides (here or at www.DowneyEthicsCLE.com)
 - 3. Link sent to you in an email within 30 minutes of program ending





https://www.surveymonkey.com/r/market1025



Overview of Regulations



Early Times – Lawyer Advertising Unregulated

TTORNEY AT LAW-SPRINGFIELD, sing greenness in A Illinois, (formerly of Pittsfield, Ill.,) having permaed the presence of nently located in Springfield, will practice Law in the Sangamon Courts, and in the Federal and Supreme Courts. to the village of ed stock of Cloth Office over Johnson & Bradford's Book Store. which I am selling of ped a few minutes JAMES H MATHENY, dec2-daw distance of eight AND COUNSELLOR WITH ou Clerk's office, in the Court , our jaded horses YARRIAGE There were two tory, Springfie or opringfield, Hl. e" and an agent, A. McWILLIAMS, We would call th TTORNEY AT LAW-SPRINGER our establishment, led Don Francisco A III.—Office over Freeman's store, northwest corne. be pleased, both as g changed, the repared to manu inibusses, Carri ienda house LINCOLN & HERNDON, t, and here also we the square. TTORNEYS AND COUNSELLORS AT tons. e very flatter LAW-will practice in the Courts of Law and Chancery ixed up the past sease ht out a rin per, and ired a thoron ggs and pe tical experien in this State, -Springfield, Ill. cetened. CAMPBELL & CULLOM. er highly s We also employ among the 'irloche-TTORNEYS AND COUNSELLORS o warrant all w LAW, Springfield. Having formed a copartnership the best quality e practice of law, are prepared to attend to all business it yself. line, are invited at the distance ste and United States Courts, which may be intro have recently en ater, and when I ros Office over the store of Wm. B. Fond keep constantly meet the increa before us, extending HOMEOPATHIC PRACTICE. patrons. nountain range, from N. B -Partic E. W. ADAMS, M. D., RESPECTFUL. s, a low range of hills. ous branches. Le lyannounces to his old patrons and the public genertht us to them, and Ba-Orders r ally, that his residence and office may be found on Jefferson at our shop on street, opposite Everybody's Mill, where prompt attention slope, we passed the Illinois. e hills were small and will be paid to calls either in town or country. 851 me of them were cov-Springfield, oct20 L. A. HAMBLEN & CO., eat four or five inches FRANKLIN STREET, CHICAGO-Northwe Silver and Gold Platers. All kinds of Metal now far apart, and beis as tea sets, Communion sets,



ABA Canons (1908) Limited Advertising

"The most worthy and effective advertisement possible, even for a young lawyer, and especially with his brother lawyers, is the establishment of a well-merited reputation for professional capacity and fidelity to trust. This cannot be forced, but must be the outcome of character and conduct. The publication or circulation of ordinary simple business cards, being a matter of personal taste or local custom, and sometimes of convenience, is not per se improper. But solicitation of business by circulars or advertisements, or by personal communications, or interviews, not warranted by personal relations, is unprofessional. It is equally unprofessional to procure business by indirection through touters of any kind, whether allied real estate firms or trust companies advertising to secure the drawing of deeds or wills or offering retainers in exchange for executorships or trusteeships to be influenced by the lawyer. *Indirect* advertisement for business by furnishing or inspiring newspaper comments concerning causes in which the lawyer has been or is engaged, or concerning the manner of their conduct, the magnitude of the interests involved, the importance of the lawyer's positions, and all other like self-laudation, defy the traditions and lower the tone of our high calling, and are intolerable."



Canons Later Tweaked

"Minor changes were made by authorizing the following forms of advertising: the customary use of simple professional cards (Canon 27); inclusion of biographical information in approved law lists (Canons 27 & 43); notice to other lawyers of specialization published in legal periodicals (Canon 46); writing of articles on the law for publications (but without the right to accept employment therefrom) (Canon 40); and, designation on letterhead as proctor in admiralty or as patent or trademark lawyer (Canon 27)."

Content Regulation of Lawyer Advertising: an Era of Change, 3 GEOJLE 429 (1990)



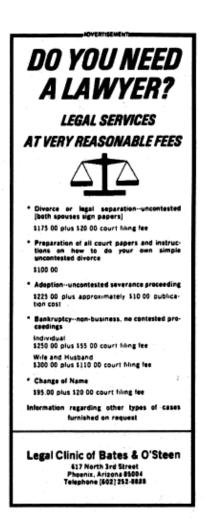
Model Code (1969) Prohibited Advertising

Arizona DR 2-101(B)

"A lawyer shall not publicize himself, or his partner, or associate, or any other lawyer affiliated with him or his firm, as a lawyer through newspaper or magazine advertisements, radio or television announcements, display advertisements in the city or telephone directories or other means of commercial publicity, nor shall he authorize or permit others to do so in his behalf."



Bates v. State Bar of Arizona (1977)



- Constitutional protection for lawyer advertising as commercial speech
 - Right to promote services
 - Right of potential clients to learn of legal rights and potential service providers
- Yet business development obviously predated Bates
 - Lawyers avoid "sales"



Post-Bates First Amendment Decisions

- Ohralik v. Ohio State Bar Ass'n, 436 U.S. 447 (1978), permitted a state to ban in-person solicitation of personal injury and wrongful death cases
- Zauderer v. Office of Disciplinary Counsel, 471 U.S. 626 (1985), held a state could not ban advertisements for specific types of claims
- Shapero v. Kentucky Bar Ass'n, 486 U.S. 466 (1988), rejected a complete ban on targeted solicitation letters
- Peel v. Attorney Registration & Discipline Committee of Illinois, 496 U.S. 91 (1990), allowed a
 lawyer to truthfully state he is a member of National Board of Trial Advocacy
- Florida Bar v. Went for It, Inc., 515 U.S. 618 (1995), allowed state to impose 30-day blackout period before lawyers could solicit disaster or accident victims



Rules Regulating Communications About Legal Services

Rule 4-7.1 – All communications

Rule 4-7.2 – Advertisements

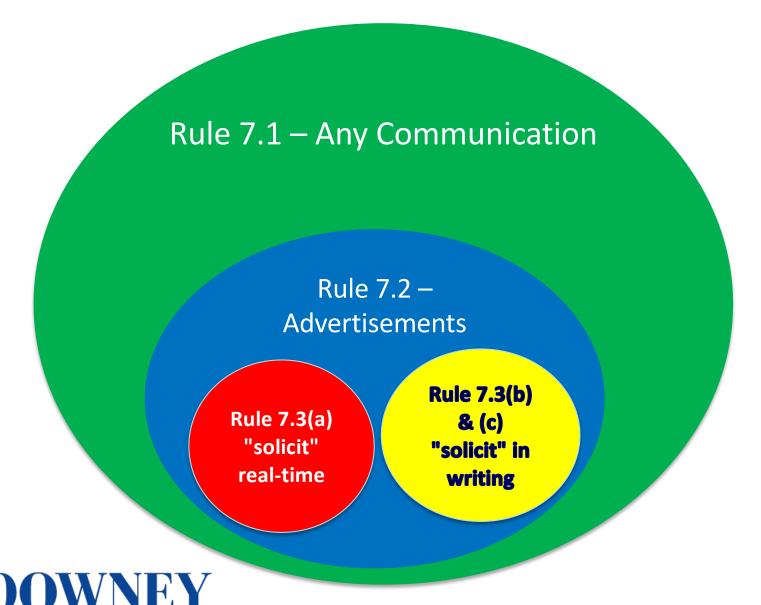
Rule 4-7.3 – Solicitations

Rule 4-7.4 – "Specialist" or "expert"

Rule 4-7.5 – Firm names and letterhead (and websites)



Advertising Regulations



	ABA Model Rule	Missouri Rule	Kansas Rule
Rule 7.1/4-7.1 – All communications	49 words	379 words	103 Words
	1 subpart	11 subparts	3 subparts
Rule 7.2/4-7.2 – Advertisements	270 words	757 words	127 words
	13 subparts	20 subparts	4 subparts
Rule 7.3/4-7.3 – "Solicitations"	260 words	809 words	239 words
	10 subparts	18 subparts	8 subparts
Rule 7.4/4-7.4 – Specialist designations	0	124 words	133 words
	Merged into Rule 7.2	3 subparts	6 subparts
Rule 7.5/4-7.5 – Firm names	0	177 words	173 words
	Merged into Rule 7.1 comment [5]	4 subparts	4 subparts



First Commandment – Rule 4-7.1

A lawyer shall not make a false or misleading communication about the lawyer or the lawyer's services.

A communication is false if it contains a material misrepresentation of fact or law.

A communication is misleading if it:

(a) omits a fact as a result of which the statement considered as a whole is materially misleading; . . .



Rule 4-7.1

A communication is misleading if it:

- (a) omits a fact as a result of which the statement considered as a whole is materially misleading;
- (b) is likely to create an unjustified expectation about results the lawyer can achieve;
- (c) proclaims results obtained on behalf of clients, such as the amount of a damage award or the lawyer's record in obtaining favorable verdicts or settlements, without stating that past results afford no guarantee of future results and that every case is different and must be judged on its own merits;
- (d) states or implies that the lawyer can achieve results by means that violate the Rules of Professional Conduct or other law;
- (e) compares the quality of a lawyer's or a law firm's services with other lawyers' services, unless the comparison can be factually substantiated;
- (f) advertises for a specific type of case concerning which the lawyer has neither experience nor competence;
- (g) indicates an area of practice in which the lawyer routinely refers matters to other lawyers, without conspicuous identification of such fact;
- (h) contains any paid testimonial about or endorsement of the lawyer, without conspicuous identification of the fact that payment has been made for the testimonial or endorsement;
- (i) contains any simulated portrayal of a lawyer, client, victim, scene, or event without conspicuous identification of the fact that it is a simulation;
- (j) provides an office address for an **office** staffed only part-time or by appointment only, without conspicuous identification of such fact; or
- (k) states that legal services are available on a contingent or no-recovery-no-fee basis without stating conspicuously that the client may be responsible for costs or expenses, if that is the case.



Missouri Rule 4-7.1 – "All Communications"

A lawyer shall not make a false or misleading communication about the lawyer or the lawyer's services. A communication is false if it contains a material misrepresentation of fact or law. A communication is misleading if it:

- (a) omits a fact as a result of which the statement considered as a whole is materially misleading;
- (b) is likely to create an unjustified expectation about results the lawyer can achieve;
- (c) proclaims results obtained on behalf of clients, such as the amount of a damage award or the lawyer's record in obtaining favorable verdicts or settlements, without stating that past results afford no guarantee of future results and that every case is different and must be judged on its own merits;
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- (g) indicates an area of practice in which the lawyer routinel
- (h) contains any paid testimonial about or endorsement of the testimonial or endorsement;
- (i) contains any simulated portrayal of a lawyer, client, victir
- (j) provides an office address for an office staffed only part-
- (k) states that legal services are available on a contingent or responsible for costs or expenses, if that is the case.

379 Words

11 Sub-Parts

/ substantiated;

of such fact:

nt has been made for

it is a simulation;

uch fact; or

nt may be



Rule 4-7.2(a) & (b) – Advertising

- (a) Subject to the requirements of Rule 4-7.1, a lawyer may advertise services through public media, such as a telephone directory, legal directory, newspaper or other periodical, outdoor advertising, radio, or television, or through direct mail advertising distributed generally to persons not known to need legal services of the kind provided by the lawyer in a particular matter.
- (b) A copy or recording of an advertisement or written communication shall be kept for two years after its last dissemination along with a record of when and where it was used. The record shall include the name of at least one lawyer responsible for its content unless the advertisement or written communication itself contains the name of at least one lawyer responsible for its content.



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 757 Words

20 Sub-Parts



Rule 4-7.2(f) Disclaimer

Any advertisement or communication made pursuant to this Rule 4-7.2, other than written solicitations governed by the disclosure rules of Rule 4-7.3(b), shall contain the following conspicuous disclosure:

"The choice of a lawyer is an important decision and should not be based solely upon advertisements."



Rule 4-7.2(g) & (h) – Tombstone Exception to Disclaimer

- (g) The disclosures required by Rule 4-7.2(e) and (f) need not be made if the information communicated is limited to the following:
 - (1) the name of the law firm and the names of lawyers in the firm
 - (2) one or more fields of law in which the lawyer or law firm practices;
 - (3) the date and place of admission to the bar of state and federal courts; an
 - (4) the address, including e-mail and web site address, telephone number, and office hours.



Missouri Rule 4-7.3 Solicitations

This Rule 4-7.3 applies to in-person and written solicitations by a lawyer with persons known to need legal services of the kind provided by the lawyer in a particular matter for the purpose of obtaining professional employment.



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This Rule 4-7.3 applies to in-person and written solicitations by a lawyer with persons known to need legal services of the kind provided by the lawyer in a particular matter for the purpose of obtaining professional employment.

819 Words

18 Sub-Parts



- (a) In-person solicitation. A lawyer may not initiate the in-person, telephone, or real time electronic solicitation of legal business under any circumstance, other than with an existing or former client, lawyer, close friend, or relative.
- (b) Written Solicitation. A lawyer may initiate written solicitations to an existing or former client, lawyer, friend, or relative without complying with the requirements of this Rule 4-7.3(b). Written solicitations to others are subject to the following requirements:
- (1) any written solicitation by mail shall be plainly marked "ADVERTISEMENT" on the face of the envelope and all written solicitations shall be plainly marked "ADVERTISEMENT" at the top of the first page in type at least as large as the largest written type used in the written solicitation;
- (2) ...
- (3) each written solicitation must include the following:

"Disregard this solicitation if you have already engaged a lawyer in connection with the legal matter referred to in this solicitation. You may wish to consult your lawyer or another lawyer instead of me (us). The exact nature of your legal situation will depend on many facts not known to me (us) at this time. You should understand that the advice and information in this solicitation is general and that your own situation may vary. This statement is required by rule of the Supreme Court of Missouri;" (87 words)



Rule 4-7.4

A lawyer may communicate the fact that the lawyer does or does not practice in particular fields of law. Any such communication shall conform to the requirements of Rule 4-7.1. Except as provided in Rule 4-7.4(a) and (b), a lawyer shall not state or imply that the lawyer is a specialist unless the communication contains a disclaimer that neither the Supreme Court of Missouri nor The Missouri Bar reviews or approves certifying organizations or specialist designations.

- (a) 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;
- (b) A lawyer engaged in admiralty practice may use the designation "admiralty," "proctor in admiralty" or a substantially similar designation.



"Summary Guidance" on Missouri Ethics Rules – Advertising

- All communications must be totally truthful
- (Almost) all <u>advertisements</u> need the "Choice of lawyer . . ." disclaimer
- Certain content receive higher scrutiny and regulation



"Highly Scrutinized" Content

- Discussions of past results (Rule 4-7.1)
- (Non-verifiable) comparisons with other lawyers (4-7.1)
- Requests seeking work the lawyer (generally) has not or does not do (Rule 4-7.1)
- Testimonials and simulations (Rule 4-7.1)
- Claims of expertise (Rule 4-7.4)
- Claims regarding office locations (4-7.1 and 4-7.2)
- Claims regarding money fees and expenses (Rule 4-7.1 and 4-7.2)



Questions for Lawyer Marketing



Lawyer Advertising Regulations Target

- Content of communication
- Method of delivery
- Scope of audience
- Location of audience
- Payment arrangement



Content of Communication

Model Rules – is it truthful?

- Missouri Rules beyond regulating truthfulness
 - Technical requirements on many aspects including required disclaimers
 - Some believe regulations are intended to make "solicitation" difficult/dangerous



Method of Delivery

 Active – sent to or reaching out to audience (much greater regulation)

Passive – audience has sought out content



Scope of Audience

Person known to have specific legal need (most regulation)

 Lay person not known to lawyer (a "non-lawyer stranger")

 People known to lawyer (family, friends, current and former clients) or other lawyers themselves



Definition of Solicitation

"This Rule 4-7.3 applies to in-person and written solicitations

- by a lawyer
- with persons known to need legal services of the kind provided by the lawyer
- in a particular matter
- for the purpose of obtaining professional employment."



Not a Solicitation

"[A] lawyer's communication typically does not constitute a solicitation if it is

- directed to the general public, such as through a billboard, an Internet banner advertisement, a website or a television commercial, or if it is
- in response to a request for information or is automatically generated in response to Internet searches."



Location of Audience

 Is lawyer admitted to practice where communication is <u>sent</u>?

 Less concern: is lawyer admitted to practice where communication <u>may be viewed</u>

 Does the jurisdiction heavily regulate lawyer advertising and solicitations?



Rule 4-5.5

(a) A lawyer shall not practice law in a jurisdiction in violation of the regulation of the legal profession in that jurisdiction or assist another in doing so.

- (b) A lawyer who is not admitted to practice in this jurisdiction shall not:
- (1) except as authorized by this Rule 4 or other law, establish an office or other systematic and continuous presence in this jurisdiction for the practice of law; or
- (2) hold out to the public or otherwise represent that the lawyer is admitted to practice law in this jurisdiction.



Means of Payment

Okay to pay for <u>advertising</u> costs

Not okay to pay for "clients" or share legal fees

 Pay per click is okay (advertising), pay per lead is okay, but pay per client is <u>not</u> okay



Rule 4-7.2(c)

A lawyer shall not give anything of value to a person for recommending the lawyer's services, except that:

- a lawyer may pay the reasonable cost of advertising or written communication permitted by this Rule 4-7.2;
- (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 Rule 4-1.17; and
- (3) a lawyer may pay the usual charges of a qualified lawyer referral service registered under Rule 4-9.1 or other not-for-profit legal services organization.



Rule 4-5.4

- (a) A lawyer or law firm shall not share legal fees with a nonlawyer, except that: . . .
- (c) A lawyer shall not permit a person who recommends, employs, or pays the lawyer to render legal services for another to direct or regulate the lawyer's professional judgment in rendering such legal services.



Application of Rules



- Content?
- Method of Delivery?
- Audience scope?
- Audience location?
- Payment?



Web Content

 Lawyer creates content on the web (website, social media, audio, video)

 People can visit the site to learn about/view/listen to the content



- Content? Advertising or educational?
- Method of Delivery? Passive
- Audience scope? Anyone who visits
- Audience location? Anywhere
- Payment? Nothing special



Web Content on Client Matters

 Lawyer creates content on the web (website, social media, audio, video) about legal matters handled for clients

 People can visit the site to learn about the subject of the content



- Content? Advertising or educational?
 - Special concerns: client confidentiality and discussing past results
- Method of Delivery? Passive
- Audience scope? Anyone who visits
- Audience location? Anywhere
- Payment? Nothing special



Web Content With Follow-Up

- Lawyer creates content on the web (website, social media, audio, video)
- People can visit the site to learn about the subject of the content
- Anyone who visits the website is <u>called</u> by advertising company and firm is charged per call



- Content? Advertising (presumably)
- Method of Delivery? Active (call)
- Audience scope? Anyone who visits
- Audience location? Wherever called
- Payment? "Pay per call" okay under Rule 4-7.2

Targeted communication – calls would be regulated – and possibly prohibited – under Rule 4-7.3(a)

More responsibility for targeting where not licensed



Email to Promote Web Content

 Lawyer creates content on the web (website, social media, audio, video)

 Lawyer pays to have people living in Florida (where lawyer is not licensed) receive email notice of content



- Content? Advertising or educational?
- Method of Delivery? Active (targeted email)
- Audience scope? <u>Targeted individuals</u>
- Audience location? Where targeted
- Payment? Nothing special

Targeted communication – are people known to need legal services of the type offered? (If so, Rule 4-7.3 solicitation)

Potential issues with unauthorized practice (Rule 4-5.5) and advertising violations in another state (FL)

More responsibility for targeting where not licensed



"Search Engine Marketing"

 Lawyer creates content on the web (website, social media, audio, video)

 Lawyer pays to have people see lawyer's content when they search related content ("Search Engine Marketing")



- Content? Advertising
- Method of Delivery? <u>Passive</u>
- Audience scope? Anyone who searches
- Audience location? Location of searcher
- Payment? "Pay per click" (okay as long as "regular" cost)

Passive and not targeted – Rule 4-7.2 advertisement

More responsibility if appearance triggered/limited by location



CHAT on Website

- Lawyer creates content on the web (website, social media, audio, video)
- People can visit the site to learn about the subject of the content
- Anyone who visits receives a CHAT greeting, "Can our firm help you with a legal matter?"



- Content? Advertising
- Method of Delivery? <u>Passive</u> (only visitors) but what about the chat?
- Audience scope? Anyone who visits
- Audience location? Anywhere
- Payment? Nothing special

Regulation likely under Rule 4-7.2, so less problematic



Seminars – MO Informal Opinion 2018-13

Attorney plans to present educational seminars about estate planning.

At the end of the seminar, a non-lawyer presenter will give information about costs of estate planning and offer audience members a discount certificate for Attorney's estate planning services.

Alternatively, Attorney is considering sending attendees a followup letter describing Attorney's services and enclosing a discount certificate.

May Attorney participate in the program?



- Content? Educational + Costs and Discount Offer
- Method of Delivery? In person
- Audience scope? Anyone who attends
- Audience location? Physically present
- Payment? Not discussed



Informal Opinion 2018-13 – Answer

Attorney may give educational seminars.

It is permissible for information about Attorney's legal services to be available at the seminar for inquirers, but Attorney may not initiate the in-person solicitation of legal business.

The promotion of Attorney's services or offering of a discount certificate at the seminar would constitute in-person solicitation prohibited by Rule 4-7.3.

Attorney may not violate Rule 4-7.3 through the actions of another, including a non-lawyer co-presenter at the seminar. See Rule 4-8.4(a). Attorney may mail attendees a solicitation letter after the seminar if the written solicitation complies in all respects with Rule 4-7.3, Direct Contact with Prospective Clients.



QUESTION: Attorney plans to put on a free seminar on various legal issues. Attorney will advertise this seminar in the local newspaper.

ANSWER: This will not violate the Rules of Professional Conduct. However, under Rule 4-7.3(b), Attorney should be certain not to engage in solicitation during the seminar.



QUESTION: Attorney proposes to offer a free seminar to provide information about estate planning. Attorney will describe the fee schedule and offer a free one hour consultation only to those who attend the seminar.

ANSWER: Attorney may offer a free seminar but Attorney may not solicit during the seminar. Such solicitation would violate Rule 4-7.3(b). Attorney may advertise a free one hour consultation but may not limit it to those who attend the seminar.



QUESTION: Attorney proposes to use an advertisement which includes the phrase "Sign up at seminar for free living will." The advertisement will also describe living trusts as "revolutionary" and "risk-free."

ANSWER: The phrase about signing up for a free living will does not violate the rules but indicates that there is a concern about the possibility that "in person" solicitation in violation of Rule 4-7.3(b) may occur at the seminar. The use of the words "revolutionary" and "risk-free" in connection with living trusts raises concerns. Living trusts have been in use for many years and have been quite popular estate planning tools for several years. Therefore, the accuracy of the word "revolutionary" is doubtful. The term "risk-free" could be interpreted as indicating that a living trust is right for everyone, will never have adverse consequences and cannot be challenged. The accuracy of this term is also doubtful.



QUESTION: Attorney will be giving a seminar for people in a particular industry. The seminar is intended to be informational in nature. Course materials and promotional material will include the name of Attorney's firm. Will this violate the rules?

ANSWER: Based on the general information provided, Attorney's proposed conduct will not violate the Rules of Professional Conduct. Any additional facts could change the opinion. Attorney should be aware that the materials distributed at the meeting with the name and address of Attorney's firm would be considered advertising materials. Therefore, those materials must comply with the requirements of Rules 4-7.1 – 4-7.5, including any disclaimer requirements that might apply.



Conclusory Matters

- <u>Questions</u> If you have questions after the program, please email them to Paige Tungate at <u>ptungate@DowneyLawGroup.com</u>
- <u>Post-Program Survey</u> A survey will be emailed to you about 30 minutes after this program. Also, here is the survey link:

https://www.surveymonkey.com/r/market1025

- <u>Certificate of Completion</u> Available through the Post-Program Survey
- <u>Kansas Credit</u> If you are seeking Kansas credit, you need to enter the
 <u>two Attendance Verification Words</u> and your Kansas information into the
 Post-Program Survey. *Please complete this information in the survey this* <u>week</u>, so we can ensure you receive proper credit





https://www.surveymonkey.com/r/market1025



Timed Agenda

12:00-05 Introduction

12:05-55 Discussion of legal ethics and lawyer marketing



Future Programs

October 30 – Thursday at 12:00 Noon CT – Neurodiversity in the Legal Profession

November 4 – Tuesday at 3:00 PM CT – Legal Ethics and Attorney Fees - 1.0 Ethics CLE

November 19 – Wednesday at 12:00 Noon CT – Legal Ethics in a Transactional Law Practice

December 4 – Thursday at 12:00 Noon CT – **Duties of Candor and Dishonest Clients**

December 17 – Wednesday at 12:00 Noon CT – Legal Ethics and Criminal Law

www.DowneyEthicsCLE.com



Thank you



Downey Law Group LLC (314) 961-6644 (844) 961-6644 toll free MDowney@DowneyLawGroup.com



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