

CHAPTER II

THE ADVERTISING DEPARTMENT AND THE LAW

As government and business have become more closely related, laws regulating business and advertising have become more complex and extensive. As the United States moves towards an information-based society with advances in technology, laws relative to publications and the rights of individuals have become increasingly more important. These laws attempt to strike a balance between the constitutional right of free speech and the individual's right to privacy. The "shifting" of this balance presents ever-changing challenges to advertising departments.

This chapter examines several of the more important issues that advertising departments may face on a regular basis. While much of the law concerning advertising has been enacted statutorily, case law must always be examined for extensions and judicial interpretations of the statutes.

RIGHT TO REFUSE ADVERTISING

Newspapers are generally considered private enterprises, not public or governmental entities. Although newspapers are subject to legislative regulations, as are many other types of private enterprises, they may not be compelled to publish any material or advertisements they do not deem as newsworthy. However, those publications having obtained the "official journal" status of the state or locale are obligated to print notices for the governing body. These official journal publications are not coerced into becoming an "official journal" since they must submit themselves to the governing body to be considered for that designation. Thus, a newspaper which qualifies and accepts the position as an official journal may not refuse to publish those notices which it is obligated to publish, or else it may lose its designation as the official journal.

In *Friedenberg v. Times Publishing Company*,¹ a newspaper publisher refused to accept an advertisement from a potential client. The Louisiana Supreme Court held that a publisher is free to contract with whom he pleases, and that the courts would refrain from becoming involved in this type of dispute. More specifically, the Louisiana Supreme Court stated:

*The weight of authority is that the publishing of a newspaper is a strictly private enterprise, and the publishers thereof are free to contract and deal or refuse to contract and deal with whom they please. ...And at any rate, it is for the legislature, and not for the courts, to declare that a business has become impressed with a public use.*²

LIABILITY FOR TYPOGRAPHICAL ERRORS

A general advertisement in a newspaper for the sale of goods is a mere invitation to enter into a bargain and is not considered an offer under contract law. Therefore, a publisher who makes a mistake in printing an advertisement traditionally has not been liable to the advertiser for any losses sustained as a result of selling the product at the mistaken price. Cases involving

¹ 170 La. 3, 127 So. 345 (1930).

² *Id.*

typographical errors in advertisements are considered and decided on a case-by-case basis. Hence, the facts of a particular case will likely govern the outcome of that case.

For example, in a Mississippi case, *Meridian Star v. Kay*,³ the Mississippi Supreme Court ordered a newspaper to pay damages for a mistaken advertisement. In that case, a sale advertisement was supposed to have been printed as “1/4 off,” but was printed as “1/2 off.” The merchant, Kay, decided that he could not refuse to sell at “1/2 off” because his reputation was at stake. Although the newspaper offered to print a correction, the publisher had stated in a letter that “as we understand the situation, our liability--if any--is limited to the difference between ‘1/4 off’ and ‘1/2 off’ [of the] merchandise actually sold as a result of the 40[sic]-inch ad in question.”

The merchant was able to prove that the newspaper orally agreed to pay for the difference between the two prices. The Mississippi Supreme Court pointed out that the traditional remedy of absolving the newspaper of liability was invalid because of the subsequent agreement between the merchant and the newspaper. The lesson of *Meridian Star* is that a newspaper should not admit liability for advertisements which contain errors. Generally, when an error does occur in an advertisement, the newspaper will print corrections in the next publication without charge.

ADVERTISING BY PUBLIC BODIES AND PUBLIC OFFICIALS OTHER THAN LEGAL ADVERTISING

Parish and municipal governing authorities are permitted by R.S. 33:4873 to advertise by publications and radio as follows:

- (1) *Those serving territories exceeding one hundred thousand population may spend the sum of thirty thousand dollars annually.*
- (2) *Those serving a territory with a population not exceeding one hundred thousand may spend the sum of fifteen thousand dollars annually.*

R.S. 43:111.1 sets forth the following limitations on the substance of the advertisements:

No public funds shall be used in whole or in part for the payment of the cost of any advertisement containing therein the name of any public official whether elected or appointed; provided, however, that the provisions of this section shall in no case be construed to apply to advertisements or notices required or authorized by law to be published or to any advertisements placed by any public agency or body authorized by law to advertise in the furtherance of its functions and duties.

R.S. 43:31 prohibits any branch, department, agency, official, employee or other entity of state government from expending funds of, administered by, or under the control of any branch, department, agency, employee, official or other entity of state government to print material or otherwise to urge any elector to vote for or against any candidate or proposition on an election ballot.

R.S. 51:1286 allows the proceeds of the tax levied by the Louisiana Tourism Promotion District for the purchase of media advertisement and provides, in part:

³ 41 So.2d 30 (Miss. 1949), *error overruled*, 41 So.2d 746 (Miss. 1949), *aff'd*, 52 So.2d 35 (Miss. 1951).

- C. (1) *The proceeds of the tax herein authorized shall be irrevocably pledged and dedicated for the purposes and in the order of priority as provided in Paragraph (2) of this Subsection.*
- (2) (a) *For paying costs annually incurred that are associated with the levy and collection of the sales tax authorized by this Subpart.*
- (b) *To transfer such amounts as may be determined by the district to the Department of Culture, Recreation and Tourism for the promotion of the state’s tourism industry through the purchase of media advertisement, including but not limited to newspaper, magazine, billboard, radio, and television advertisement.*
- (c) *To transfer such amounts as may be determined by the district to the Department of Culture, Recreation and Tourism to assist the state in the promotion of tourism. Provided that any funds used by the department for the purchase of in-state media advertisement shall not exceed ten percent of all funds used for the purchase of media advertisement, and that such expenditures are consistent with the office of tourism’s strategic plan for marketing.*

Therefore, it appears that the tax proceeds of the Louisiana Tourism Promotion District may be used in out-of-state newspaper advertisements but not in in-state newspaper advertisements.

LIBELOUS ADVERTISING

Advertising can be as potentially libelous⁴ as news material. The danger in advertising may even be greater because there may be less of an opportunity to validate the material for advertisements. Although there is no statutory duty to investigate and validate material in advertisements, an advertisement may be of such a nature and character as to demand an inquiry as to its truth or falsity before “airing” it to the public, as in *Sanders v. Times-Picayune Publishing Company*.⁵ In *Sanders*, the Louisiana Supreme Court held that *The Times-Picayune* should have inquired into the truth or falsity of its article relating to a report already in circulation that important court papers had been cut up by a deputy clerk of court, upon instructions from counsel and the clerk of court. It may not be a defense to say that the newspaper did not originate the libelous advertisement. Generally, the rules relative to libelous advertising parallel those for the news department. It is also notable that the “speech” at issue in the seminal libel case *New York Times v. Sullivan* involved an advertisement. The U.S. Supreme Court did not find actual malice in that case even though many of the incorrect assertions of the advertisement could have been disproved with the information available in the *New York Times*’ newsroom. (See Chapter I).

⁴ There is a trend toward claims involving false or unauthorized testimonial type advertisements to be filed as claims for invasions of privacy. For an invasion of privacy to be actionable, it is not necessary that there be malicious intent on the part of the defendant. *Jaubert v. Crowley Post-Signal, Inc.*, 375 So.2d 1386 (La. 1979).

⁵ 168 La. 1125 (La. 1929).

RIGHT TO PRIVACY IN ADVERTISING

The right to privacy in advertising generally parallels the right to privacy in the news department, i.e., an actionable invasion of privacy occurs only when the conduct complained of is unreasonable and seriously interferes with the privacy interest of the complainant. (See Chapter I).

McAndrews v. Roy involved the publication of a picture in an advertisement.⁶ The complainant had taken a body-building course and had agreed to allow the operator of the health spa to use the “before” and “after” photos in its newspaper advertisements. Ten years elapsed between the time the pictures were taken and when they were published. The complainant claimed that he became the object of ridicule and criticism among his friends and co-workers shortly after the publication. The First Circuit held that the publication resulted in an invasion of privacy and awarded damages, holding that a lapse of ten years was too long without seeking renewal of the plaintiff’s permission to use the photograph. The newspaper was not named as a defendant in *McAndrews*, but the potential risk of litigation does exist.

FALSE OR FRAUDULENT ADVERTISING

Any person, including a newspaper, may be held liable for false or fraudulent advertising when an advertisement contains any assertion, representation or statement of fact which is untrue, deceptive or misleading and is made, published, disseminated, circulated or placed before the public. With respect to fraudulent or misleading advertising, R.S. 51:411 provides:

§411. Advertisements, untrue or misleading, prohibited; penalty

A. No person, with intent to sell or in any way dispose of merchandise, securities, service, or anything directly or indirectly, to the public for sale or distribution, or with intent to increase the consumption, or to induce the public in any manner to enter into any obligation relating thereto, or to acquire title, or an interest therein, shall make, publish, disseminate, circulate, or place before the public, or cause directly or indirectly to be made, published, disseminated, circulated, or placed before the public, in this state, in a newspaper or other publication, or in the form of a book, notice, hand-bill, poster, bill, circular, pamphlet, or letter, or radio broadcasts, telecasts, wire, wireless, motion picture, or in any other way, an advertisement of any sort regarding merchandise, securities, service, or anything offered to the public, which advertisement contains any assertion, representation, or statement of fact which is untrue, deceptive, or misleading.

B. No person shall falsely advertise, represent, or hold out that any sale of goods, wares, or merchandise is an insurance, salvage, removal, closing out, going out of business, liquidation or smoke, fire, or water damage sale. Such a sale may be conducted for a maximum of six months. No person contemplating such a sale may order any goods for the purpose of selling them at such a sale, and any purchases or additions to the stock during the term of the sale or within sixty days prior to the sale shall constitute a violation of this Section.

C. No person shall advertise, represent, or hold out that he is selling or will sell any goods, wares, or merchandise at wholesale prices, unless he is a wholesaler,

⁶ 131 So.2d 256 (La. App. 1st Cir. 1961).

as defined herein, and unless the sales will be wholesale sales, as defined herein. A wholesaler, for purposes of this Section, is a person whose sales are wholesale sales as hereinafter defined. A wholesale sale is a sale for the purpose of resale in the ordinary course of business or a sale for purposes other than resale but at the price at which retailers currently purchase the same or similar goods or commodities at current wholesale prices offered by a bona fide wholesale house in its trade area; however, nothing herein shall apply to wholesalers selling in bulk or in quantities in excess of those which consumers usually purchase from bona fide retail outlets. Nothing in this Section shall prevent a person from being both a wholesaler and a retailer, providing that under this operation the firm has both a retail and a wholesale occupational license.

D. The carriage by a radio or television broadcast station or by a cable television station or newspaper of advertising which is found to be in violation of this Section shall not be considered a violation by the broadcast or television station or newspaper of this Section.

E. Whoever violates this Section shall be fined not less than five hundred-dollars nor more than twenty-five hundred dollars or imprisoned for not less than ten days nor more than six months, or both for each offense.

Although R.S. 51:411 may not statutorily impose an affirmative duty on newspapers to monitor the integrity of clients' advertisements, prior to 2004, newspapers could find themselves in the position of having to participate in litigation by explaining their part in producing the particular advertisement. However, in 2004, R.S. 51:411 was amended to add Paragraph D to insulate the newspapers from liability under this provision.

Under certain circumstances, Louisiana's "Unfair Trade Practices and Consumer Protection Law"⁷ may apply to newspapers in the area of false or fraudulent advertising. R.S. 51:1401, *et seq.*, was enacted to prohibit unfair or deceptive methods, acts or practices in the conduct of trade or commerce. Although "trade or commerce" has been broadly defined in R.S. 51:1402 as:

...the advertising, offering for sale, sale, or distribution of any services and any property, corporeal or incorporeal, immovable or movable, and any other article, commodity, or thing of value wherever situated, and includes any trade or commerce directly or indirectly affecting the people of the state,⁸

and specifically references "advertising," R.S. 51:1401, *et seq.*, does provide for a limited exemption for publishers, owners, agents and employees of newspapers. The exemption provides that the provisions of the Unfair Trade Practices and Consumer Protection Law do not apply to:

(2) Acts done by the publisher, owner, agent, or employee of a newspaper, periodical or radio or television station or other advertising medium in the publication or dissemination of an advertisement when the publisher, owner, agent or employee did not have knowledge of the false, misleading or deceptive character

⁷ R.S. 51:1401, *et seq.*

⁸ R.S. 51:1402(9).

*of the advertisement, did not prepare the advertisement and did not have any direct financial interest in the sale or distribution of the advertised product or service.*⁹

Therefore, the one claiming the exemption must not:

- (1) Have knowledge of the false, misleading or deceptive character of the advertisement;
- (2) Have prepared the advertisement; and
- (3) Have any direct financial interest in the sale or distribution of the advertised product or service.

It must be noted that, under certain circumstances, the courts may award *triple damages, attorneys' fees, and costs*¹⁰ to the successful litigant in a lawsuit.

Disparagement of Agricultural/Aquacultural Products

In 1991, the Louisiana Legislature determined that the production of agricultural and aquacultural food products constitutes an important and significant portion of the state economy, and that it is beneficial to the citizens of Louisiana to protect the vitality of the agricultural and aquacultural economy by providing a cause of action for producers of these products to recover damages for the disparagement of any perishable agricultural or aquacultural food product. R.S. 3:4501. Any civil action for damages for disparagement of these products must be commenced within one year after the cause of action accrues. R.S. 3:4504.

R.S. 3:4502 provides:

§4502. Definitions

As used in this Chapter, the following terms shall have the following meanings:

- (1) *“Disparagement” means dissemination to the public in any manner of any false information that the disseminator knows or should have known to be false, and which states or implies that a perishable agricultural or aquacultural food product is not safe for consumption by the consuming public. Such information is presumed to be false when not based upon reasonable and reliable scientific inquiry, facts, or data.*
- (2) *“Perishable agricultural or aquacultural food product” means any food product of agriculture or aquaculture which is sold or distributed in a form that will perish or decay beyond marketability within a period of time.*

Presumably, dissemination “in any manner” would encompass the dissemination of information by or through the newspaper medium.

ADVERTISEMENTS FOR INSURANCE COMPANIES

Any person, including a newspaper, can be fined for printing advertisements from insurance companies that are not authorized by the Commissioner of Insurance to do business in Louisiana, as set forth in R.S. 22:1946:

⁹ R.S. 51:1406(2).

¹⁰ R.S. 51:1409.

§1946. Advertisement by insurers

A. No person shall publish or print in any newspaper, magazine, periodical, circular letter, pamphlet, or in any other manner or publish by radio broadcasting in this state, any advertisement or other notice either directly or indirectly setting forth the advantages of or soliciting business for any insurer which has not been authorized to do business in Louisiana.

B. No person shall accept for publication or printing in any newspaper, magazine, or other periodical, or circular letter or pamphlet, or in any other manner, or for radio broadcasting in this state, any advertisement or other notice either directly or indirectly setting forth the advantages of or soliciting business for any insurer unless the advertisement or notice is accompanied by a certificate from the office of the commissioner of insurance to the effect that the insurer is authorized to do business in Louisiana.

C. Whoever violates this Section shall be fined not more than one thousand dollars or imprisoned for not more than one year, or both.

This law is designed to protect the public from unlicensed insurance companies. Thus, a violation of R.S. 22:1946 carries a fine of not more than one thousand dollars or imprisonment for not more than one year, or both.

POLITICAL ADVERTISEMENTS

There are three basic laws concerning political advertising. The first, R.S. 18:1463, imposes expenditure reporting requirements for anonymous political advertisements. The second, R.S. 18:1464, deals with the advertising rates which these advertisers must pay. The third, R.S. 18:1505.3(D)(2), requires newspaper publishers to require, prior to publishing a political advertisement containing a “paid for by” line, the person making the payment for the political advertisement to provide a written statement containing certain information. This provision also requires the publisher to maintain the statement “as a public record” at its official business address for a period of two years during which time the publisher must make the statement available for public inspection as the custodian of a public record. A Political Advertisement Agreement that should satisfy the requirement of La. R.S. 18:1505.3(D)(2) follows the statutory provisions on political advertising.

§1463. Political material; ethics; prohibitions

A. The Legislature of Louisiana finds that the state has a compelling interest in taking every necessary step to assure that all elections are held in a fair and ethical manner and finds that an election cannot be held in a fair and ethical manner when any candidate or other person is allowed to print or distribute any material which falsely alleges that a candidate is supported by or affiliated with another candidate, group of candidates, or other person, or a political faction, or to publish statements that make scurrilous, false, or irresponsible adverse comments about a candidate or a proposition. The legislature further finds that the state has a compelling interest to protect the electoral process and that the people have an interest in knowing the identity of each candidate whose number appears on a sample ballot in order to be

fully informed and to exercise their right to vote for a candidate of their choice. The legislature further finds that it is essential to the protection of the electoral process that the people be able to know who is responsible for publications in order to more properly evaluate the statements contained in them and to informatively exercise their right to vote. The legislature further finds that it is essential to the protection of the electoral process to prohibit misrepresentation that a person, committee, or organization speaks, writes, or acts on behalf of a candidate, political committee, or political party, or an agent or employee thereof.

- B. (1) *No person shall cause to be printed or assist in the distribution, transportation, or transmission by any means of any facsimile of an official ballot or cause to be printed, distributed, transported, or transmitted any unofficial sample ballot with the number of a candidate unless the name of the candidate to whom the ballot number was assigned is correctly listed on the ballot.*
- (2) *No person shall cause to be printed or assist in the distribution, transportation, or transmission by any means of any facsimile of an official ballot, or cause to be printed, distributed, transported, or transmitted any unofficial sample ballot containing a photograph, or likeness of any person which falsely alleges, with an intent to misrepresent, that any person or candidate, or group of candidates in an election is endorsed by or supported by another candidate, group of candidates or other person.*
- C. (1) *No person shall cause to be distributed, or transmitted, any oral, visual, or written material containing any statement which he knows or should be reasonably expected to know makes a false statement about a candidate for election in a primary or general election or about a proposition to be submitted to the voters.*
- (2) *Whenever any person, political committee, entity or organization makes a disbursement for the purpose of the financing of any electioneering communication, such communication shall comply with the following items under the following circumstances:*
 - (a) *If the communication is paid for and authorized by a candidate, an authorized political committee of a candidate, or its agents, it shall clearly state that the communication has been paid for by such authorized political committee. The name of the political committee paying for the communication shall be given in full and no acronyms shall be used.*
 - (b) *If the communication is paid for by other persons, but authorized by a candidate, an authorized political committee of a candidate, or its agents, it shall clearly state that the communication is paid for by such other persons and authorized by such political committee. The name of the authorized political committee shall be given in full and no acronyms shall be used.*

- (c) *If the communication is not authorized by a candidate, a political committee of a candidate, or its agents, it shall clearly state the (i) name, (ii) physical address (not post office box), and (iii) telephone number and the world wide web address if available of the person, committee, entity or organization who paid for the communication and state that the communication is not authorized by any candidate or candidate committee. The name of the payer shall be given in full and no acronyms shall be used.*
- (3) *If an individual, association, organization, committee, or corporation is responsible for or causes the distribution or transmission of any statements relative to candidates or propositions which do not fully disclose the name of the individual or the name of the association, organization, committee, or corporation, and the full and correct name and address of its chairman or other chief administrative officer and whether or not such individual, association, organization, committee, or corporation supports or opposes such candidate or proposition, such individual, association, organization, committee, or corporation shall report all expenditures incurred in relation to the publication, distribution, transportation, or transmission in accordance with R.S. 18:1491.7, 1495.5, or 1501.1.*
- (4) (a) *No person shall misrepresent himself or any committee or organization under his control as speaking, writing, or otherwise acting for or on behalf of any candidate, political committee, or political party, or any employee or agent thereof.*
- (b) *No person shall willfully and knowingly participate in or conspire to participate in a plan, scheme, or design to misrepresent himself or any committee or organization under his control or under the control of any other participant in the plan, scheme, or design as speaking, writing, or otherwise acting for or on behalf of any candidate, political committee, or political party, or any employee or agent thereof.*
- (c) *A radio or television broadcaster who broadcasts a paid political announcement or advertisement, the content of which the broadcaster had no input in or control over, is not subject to the provisions of this Paragraph.*
- (5) *For purposes of Paragraph (2) of this Subsection, the term "electioneering communication" means any broadcast, cable or satellite communication that refers to a legally qualified candidate for elected office and is broadcast within sixty days before any election in which such candidate is on the ballot.*
- D. (1) *An affected candidate or voter shall be entitled to an injunction to restrain future violations of Subsections B and C of this Section.*

- (2) *In the event a permanent injunction is granted, reasonable attorney fees shall be allowed the petitioner by the court which shall be taxed as costs to be paid by the defendant.*
- E. *No person shall cause to be distributed or transmitted for or on behalf of a candidate for political office any oral, visual, or written material constituting a paid political announcement or advertisement, which is paid for by a third-party entity, without providing the name of the third-party entity on the face of the advertisement. The name of the third-party entity shall be included on written material, political announcements, and advertisements so that it is clear and understandable. The name of the third-party entity in visual and oral political announcements or advertisements shall be included so that it is clearly understandable as well as audible and visible for not less than three seconds. If the advertisement is placed by a public relations firm, advertising agency, media buyer, or other person who purchases media advertising or time or space for such advertising, such person shall provide the information required by this Section. For the purposes of this Subsection, “person” means any individual, partnership, association, labor union, political committee, corporation, or other legal entity, including its subsidiaries; however, “person” shall not mean any radio station, television broadcast station, cable television company, or newspaper.*
- F. *Whoever violates any provision of this Section may be punished by a fine not to exceed two thousand dollars or be imprisoned for not more than two years, or both.*

§1464. Excessive charge for political advertisements prohibited; penalty

- A. *No daily, bi-weekly, weekly, semi-monthly, or monthly newspaper, journal, periodical, or other publication and no radio station, television station, or chain or network of radio or television stations operating in this state shall assess or charge for political announcements and advertisements any amount which is in excess of the rates assessed and charged for regular commercial advertising.*
- B. *Whoever violates this Section shall be fined not more than five hundred dollars or be imprisoned for not more than six months, or both.*

Although R.S. 18:1463 provides that an affected candidate or voter shall be entitled to an injunction, in light of both state and federal jurisprudence involving freedom of speech issues, there is a “strong presumption” against the constitutional validity of any prior restraint on expression.¹¹ Accordingly, a plaintiff would have a heavy burden to show any justification for the imposition of such a prior restraint.

R.S. 18:1505.3(D) provides:

¹¹ *Organization for a Better Austin v. Keefe*, 402 U.S. 415, 91 S.Ct. 1575, (1971); *Guste v. Connick*, 515 So.2d 436 (1987). In *Organization*, *supra*, the U.S. Supreme Court held that an injunction, so far as it imposes prior restraint on speech and publication, constitutes an impermissible restraint on First Amendment rights. However, the protection as to previous restraint is not absolutely unlimited, but the limitation has been recognized only in exceptional cases. *Near v. Minnesota ex rel Olson*, 283 U.S. 697, 51 S.Ct. 625 (1931); *See also* Chapter I.

§1505.3. Subterfuge to avoid compliance with Chapter

* * *

- D. (1) (a) *No public relations firm, advertising agency, media buyer, or other person who purchases media advertising time or space shall accept payment for placing any advertisement which purports to be paid for by a particular candidate or political committee from any source other than such candidate or political committee.*
- (b) *Any person who violates the provisions of this Paragraph shall be assessed a penalty by the supervisory committee of not more than five thousand dollars or the amount of the payment, whichever is greater.*
- (2) (a) (i) *No person shall pay for an advertisement which purports to be paid for by a particular candidate or political committee without the consent of such candidate or political committee.*
- (ii) *Any person who violates the provisions of this Subparagraph shall be assessed a penalty by the supervisory committee of not more than five thousand dollars or the amount of the payment, whichever is greater.*
- (b) *If a publisher or broadcaster of an advertisement which purports to be paid for by a particular candidate or political committee accepts payment for such an advertisement from any source other than such candidate or political committee, the publisher or broadcaster shall require, prior to publishing or broadcasting the advertisement, that the person making the payment provide a written statement containing the following:*
- (i) *The full name and address of the individual or name of the organization, committee, or corporation, and the full name and address of its chairman or other chief administrative officer who is the source of the funds used to pay for the advertisement, and*
- (ii) *A statement that the advertisement is being run with the knowledge and consent of the candidate or political committee which the advertisement purports has paid for the advertisement.*
- (c) *A completed form meeting the standards required by the rules promulgated by the Federal Communications Commission with regard to sponsorship identification of political advertisements shall be sufficient to meet the requirements of Subparagraph (b) of this Paragraph.*

- (d) *The publisher or broadcaster shall maintain the statement as a public record at its official business address or at the station address for a period of two years during which time the publisher or broadcaster shall make the statement available for public inspection as the custodian of a public record, pursuant to R.S. 44:1, et seq.*
 - (e) *Any person who provides false or inaccurate information in a statement required by this Paragraph shall be assessed a penalty by the supervisory committee of not more than ten thousand dollars.*
- (3) *Nothing in this Subsection shall prohibit any person who publishes or broadcasts political advertisements from accepting payment for a political advertisement from any person, so long as the advertisement does not misrepresent who paid for the advertisement either directly or indirectly through the person who purchased the advertising time or space. However, if a third party entity pays for a political announcement or advertisement for a candidate, the name of the third-party entity shall be displayed on the face of the advertisement. The font size of such display shall be no less than half of the font size of the content of the advertisement.*
 - (4) *The provisions of R.S. 18:1505.5 and 1505.6 shall not apply to violations of this Subsection.*

POLITICAL ADVERTISEMENT
LEGAL SUMMARY

False Statements

No person (newspaper included) shall cause to be distributed or transmitted any oral, visual or written material containing any statement which he knows or should be reasonably expected to know makes a false statement about a candidate for election in a primary or general election or about a proposition to be submitted to the voters. (R.S. 18:1463(C)(1).)

Publication of Political Ballots

No person (newspapers included) shall cause to be printed or assist in the distribution, transportation or transmission by any means of any facsimile of an official ballot, or cause to be printed, distributed, transported or transmitted any unofficial sample ballot with the number of a candidate unless the name of the candidate to whom the ballot number was assigned is correctly listed on the ballot. (R.S. 18:1463(B)(1).)

No person (newspapers included) shall cause to be printed or assist in the distribution, transportation or transmission by any means of any facsimile of an official ballot, or cause to be printed, distributed, transported or transmitted any unofficial sample ballot containing a photograph or likeness of any person which falsely alleges, with an intent to misrepresent, that any person or candidate or group of candidates in an election is endorsed by or supported by another candidate, group of candidates or other person. (R.S. 18:1463(B)(2).)

“Paid for by” Lines

Local/Statewide Elections – As of June 15, 1995, “Paid for by” line is **NOT** legally required.

The party responsible for the advertisement is required to report all expenditures related to the advertisement in accordance with R.S. 18:1491.7, 1495.5, or 1501.1. (R.S. 18:1463(C)(3).)

If actual payment for an advertisement is received by a newspaper from any source other than the candidate or political committee, then the source making the payment is required to provide a written statement which must be kept by the newspaper for two years and be available for public inspection. (R.S. 18:1505.3(2)(b))

Effective January 1, 2010, the name of the third party entity of an advertisement must be displayed on the face of the newspaper advertisement, and it must be clear and understandable.¹² (R.S. 18:1463(E) and 18:1505.3(D)(3).) A third party entity is understood to be a person or entity that is not the political candidate, his agent or the candidate’s political committee. However, in the event a third party entity does not properly display its name on the advertisement, newspapers are not considered a person that may be punished for distributing or transmitting any political advertisement that does not properly provide the name of the third party entity. (R.S. 18:1463(E).)

Federal Elections – Required (2 USC 441d (a)).

“Paid for by” line must state:

- If paid for and authorized by candidate, authorized political committee or its agents:

“Paid for by [political committee]”

- If paid for by others but authorized by candidate, authorized political committee or its agents:

“Paid for by [other] and authorized by [political committee]”

- If not authorized by candidate, authorized political committee or its agents:

“Paid for by [payor]; not authorized by candidate or candidate’s political committee.”

Charges for Political Advertisements

Local/Statewide Elections – Not in excess of rates charged for regular commercial advertising (R.S. 18:1464).

Penalty for Violation: Fined not more than \$500 or imprisoned for not more than six months, or both.

Federal Elections – Not in excess of amount charged for comparable use of such space for other purposes (2 USC 441d.(b)).

¹² The font size of the display must be no less than half of the font size of the content of the advertisement.

POLITICAL ADVERTISEMENT AGREEMENT

NEWSPAPER _____ DATE _____, 20 _____

I, _____ (BEING OR ON BEHALF OF) _____

A LEGALLY QUALIFIED CANDIDATE OF THE _____ POLITICAL PARTY FOR THE OFFICE OF

_____ IN THE

_____ ELECTION TO BE HELD IN _____, 20 _____, DO HEREBY REQUEST THE

PUBLICATION OF THE ATTACHED ADVERTISEMENT,

DATE(S) OF PUBLICATION

I REPRESENT THAT THE PAYMENT FOR THE ABOVE DESCRIBED ADVERTISEMENT HAS BEEN FURNISHED BY

AND YOU ARE AUTHORIZED TO PUBLISH THAT THE ADVERTISEMENT IS PAID FOR BY SUCH PERSON OR ENTITY. THE ENTITY FURNISHING THE PAYMENT, IF OTHER THAN AN INDIVIDUAL PERSON, IS A CORPORATION; A COMMITTEE; AN ASSOCIATION; OR OTHER UNINCORPORATED GROUP. THE NAME AND ADDRESS OF THE CHAIRMAN OR OTHER CHIEF ADMINISTRATIVE OFFICER WHO IS THE SOURCE OF THE FUNDS USED TO PAY FOR THE ADVERTISEMENT IS:

I AGREE TO INDEMNIFY AND HOLD THE NEWSPAPER HARMLESS FROM ANY DAMAGES OR LIABILITY, INCLUDING REASONABLE ATTORNEY'S FEES, THAT MAY ENSUE FROM THE PERFORMANCE OF THE ABOVE STATED PUBLICATION. I CERTIFY THAT THE ADVERTISEMENT BEING PUBLISHED HEREUNDER IS BEING PUBLISHED WITH THE KNOWLEDGE AND CONSENT OF THE CANDIDATE OR POLITICAL COMMITTEE INDICATED HEREIN AS HAVING FURNISHED THE PAYMENT.

DATE _____

(NAME OF ENTITY)

BY: _____

TITLE: _____

THIS DOCUMENT MUST BE EXECUTED PRIOR TO PUBLICATION OF THE ADVERTISEMENT (La. R.S. 18:1505.3).

ADVERTISING AND GAMBLING

The Louisiana Constitution, art. 12, §6(B), provides that “[g]ambling shall be defined by and suppressed by the legislature.” The legislature has defined the crime of “gambling” in R.S. 14:90 as follows:

§90. Gambling

- A. (1) (a) *Gambling is the intentional conducting, or directly assisting¹³ in the conducting, as a business, of any game, contest, lottery, or contrivance whereby a person risks the loss of anything of value in order to realize a profit.*

The Louisiana Lottery, the riverboat casinos and the land casinos are legal because Paragraphs C, D and E of R.S. 14:90 specifically provide that these shall not constitute gambling.

Merchants who conduct contests should be careful to state that no purchase of a product is necessary to participate. The comments to R.S. 14:90 state that the words “anything of value” are included in the statute to cover every possibility of loss. Arguably, the purchase of the product to enter the contest could be deemed as risking “anything of value.” This may explain the phrase “No purchase necessary,” used by most merchants in their contest rules.

The laws regarding the Louisiana Lottery contain the following provisions relative to advertising on tickets:

R.S. 47:9013. Commercial advertising on tickets

A. *The corporation may enter into contracts with any persons that provide for the placement of commercial advertising on tickets. For purposes of this Section, “commercial advertising” shall mean advertising intended for the sole benefit of the advertiser and shall not include promotional advertising intended for the benefit of the advertiser as well as the promotion of the sale of lottery tickets.*

B. *The nature of the advertising authorized in this Section and the procedures for its acceptance as well as the implementation of this Section shall be provided by rules adopted by the board of directors. The board shall retain, in its complete discretion, the authority to accept or reject any bid. Advertisements for tobacco and alcohol products shall not be accepted.*

C. *Implementation of this Section shall be in the manner provided in the procurement rules and regulations adopted by the board of directors pursuant to the authority granted by R.S. 47:9007 and 9028, and approved by the Legislative Oversight Committee as provided in R.S. 47:9019.*

R.S. 27:27.3 provides:

R.S. 27.3. Advertising; compulsive gambling information

In any advertisement of gaming activities or of a gaming establishment that is offered to the general public in print by any licensee or the casino gaming operator operated pursuant to the provisions of this Title, the toll-free telephone

¹³ Arguably, the phrase “directly assisting” in R.S. 14:90 may include advertising.

number of the National Council on Problem Gambling or a similar toll-free number approved by the board shall be placed on such advertisement.

ADVERTISING AND LABOR DISPUTES

The legislature has long recognized a need to limit the courts' authority to restrain or enjoin persons from certain acts relating to labor disputes. Accordingly, Louisiana's "Little Norris-LaGuardia Act," R.S. 23:821, *et seq.*, was enacted in 1934. R.S. 23:841(5) relates directly to "advertising" and, therefore, may affect newspaper advertising. It provides:

R.S. 23:841. Injunctions; limitation on courts' authority to issue

No court shall issue any restraining order or temporary or permanent injunction which in specific or general terms prohibits any person or persons from doing, whether singly or in concert, any of the following acts:

* * *

(5) *Giving publicity to and obtaining or communicating information regarding the existence of, or the facts involved in, any dispute, whether by advertising, speaking, patrolling any public street or any place where persons may lawfully be, without intimidation or coercion, or by any other method not involving fraud, violence, breach of the peace, or threat thereof.*

ADVERTISING BY PROFESSIONS AND TRADES

Naturally, the right to advertise in Louisiana by professions and trades is very important. However, there are special rules which members of certain professions must follow because they are governed by the rulemaking authority of state boards or state agencies. The general rule for advertising by professions and trades is set forth below:

R.S. 37:1721. Restrictions on advertising reserved to legislature

No state board, commission, department, bureau, or similar agency of the state regulating the practice of a trade or profession and exercising rulemaking powers shall make any rule or regulation which limits or restricts the right to advertise, provided that this Section shall not apply to any board, commission, department, bureau, or similar agency of the state created and regulated under the rulemaking power of the Supreme Court of Louisiana or to the Louisiana State Board of Medical Examiners, the Louisiana State Board of Barber Examiners, the Louisiana State Board of Dentistry, the State Board of Certified Public Accountants of Louisiana, Louisiana Board of Pharmacy, the Louisiana Board of Chiropractic Examiners, the Louisiana State Board of Veterinary Medicine Examiners, and the State Board of Optometry Examiners, and further provided that nothing herein contained shall be construed to prevent the prohibition of false or misleading advertising by any board, commission, department, bureau, or similar agency of the state. The right to regulate advertising except as herein provided is reserved to the legislature.

This provision allows state boards and state agencies to prohibit false or misleading advertising. However, the right to further regulate advertising for these professions and trades is reserved to

the legislature. Of course, the law concerning false or fraudulent advertising also applies to professions and trades.

The next several sections will highlight some of the law concerning advertising and specific professions and trades.

Attorneys

Advertising by attorneys is regulated by the Louisiana Supreme Court.¹⁴ Under the Rules of Professional Conduct, specifically Rules 7.1 and 7.2, attorneys are limited in the type of advertising they may use. These Rules provide:

Rule 7.2. Communications concerning a lawyer's services

The following shall apply to any communication conveying information about a lawyer, a lawyer's services or a law firm's services:

(a) Required Content of Advertisements and Unsolicited Written Communications.

(1) Name of Lawyer. All advertisements and unsolicited written communications pursuant to these Rules shall include the name of at least one lawyer responsible for their content.

(2) Location of Practice. All advertisements and unsolicited written communications provided for under these Rules shall disclose, by city or town, one or more bona fide office location(s) of the lawyer or lawyers who will actually perform the services advertised. If the office location is outside a city or town, the parish where the office is located must be disclosed. For the purposes of this Rule, a bona fide office is defined as a physical location maintained by the lawyer or law firm where the lawyer or law firm reasonably expects to furnish legal services in a substantial way on a regular and continuing basis, and which physical location shall have at least one lawyer who is regularly and routinely present in that physical location. In the absence of a bona fide office, the lawyer shall disclose the city or town of the primary registration statement address as it appears on the lawyer's annual registration statement. If an advertisement or unsolicited written communication lists a telephone number in connection with a specified geographic area other than an area containing a bona fide office or the lawyer's primary registration statement address, appropriate qualifying language must appear in the advertisement.

(3) The following items may be used without including the content required by subdivisions (a)(1) and (a)(2) of this Rule 7.2:

(A) Sponsorships. -- A brief announcement in any public media that identifies a lawyer or law firm as a contributor to a specified charity or as a sponsor of a public service announcement or a specified charitable,

¹⁴ Actually, the practice of law, including advertising by attorneys, is regulated by the Louisiana Supreme Court. The Rules of Professional Conduct were approved by the Louisiana Supreme Court prior to adoption by the Louisiana State Bar Association.

community, or public interest program, activity, or event, provided that the announcement contains no information about the lawyer or the law firm other than permissible content of advertisements listed in Rule 7.2(b) and the fact of sponsorship or contribution, in keeping with Rule 7.8(b);

(B) Gift/Promotional Items. -- Items, such as coffee mugs, pens, pencils, apparel, and the like, that identify a lawyer or law firm and are used/disseminated by a lawyer or law firm not in violation of these Rules, including but not limited to Rule 7.2(c)(13) and Rule 7.4; and

(C) Office Sign(s) for Bona Fide Office Location(s). -- A sign, placard, lettering, mural, engraving, carving or other alphanumeric display conveying information about a lawyer, a lawyer's services or a law firm's services that is permanently affixed, hanging, erected, or otherwise attached to the physical structure of the building containing a bona fide office location for a lawyer or law firm, or to the property on which that bona fide office location sits.

(b) Permissible Content of Advertisements and Unsolicited Written Communications. If the content of an advertisement in any public media or unsolicited written communication is limited to the following information, the advertisement or unsolicited written communication is exempt from the filing and review requirement and, if true, shall be presumed not to be misleading or deceptive.

(1) Lawyers and Law Firms. A lawyer or law firm may include the following information in advertisements and unsolicited written communications:

(A) subject to the requirements of this Rule and Rule 7.10, the name of the lawyer or law firm, a listing of lawyers associated with the firm, office locations and parking arrangements, disability accommodations, telephone numbers, Web site addresses, and electronic mail addresses, office and telephone service hours, and a designation such as "attorney", "lawyer" or "law firm";

(B) date of admission to the Louisiana State Bar Association and any other bars, current membership or positions held in the Louisiana State Bar Association, its sections or committees, former membership or positions held in the Louisiana State Bar Association, its sections or committees, together with dates of membership, former positions of employment held in the legal profession, together with dates the positions were held, years of experience practicing law, number of lawyers in the advertising law firm, and a listing of federal courts and jurisdictions other than Louisiana where the lawyer is licensed to practice;

(C) technical and professional licenses granted by the State or other recognized licensing authorities and educational degrees received, including dates and institutions;

- (D) military service, including branch and dates of service;*
- (E) foreign language ability;*
- (F) fields of law in which the lawyer practices, including official certification logos, subject to the requirements of subdivision (c)(5) of this Rule;*
- (G) prepaid or group legal service plans in which the lawyer participates;*
- (H) fee for initial consultation and fee schedule, subject to the requirements of subdivisions (c)(6) and (c)(7) of this Rule;*
- (I) common salutatory language such as “best wishes,” “good luck,” “happy holidays,” or “pleased to announce”;*
- (J) punctuation marks and common typographical marks; and*
- (K) a photograph or image of the lawyer or lawyers who are members of or employed by the firm against a plain background.*

(2) Public Service Announcements. A lawyer or law firm may be listed as a sponsor of a public service announcement or charitable, civic, or community program or event as long as the information about the lawyer or law firm is limited to the permissible content set forth in subdivision (b)(1) of this Rule.

(c) Prohibitions and General Rules Governing Content of Advertisements and Unsolicited Written Communications.

(1) Statements About Legal Services. A lawyer shall not make or permit to be made a false, misleading or deceptive communication about the lawyer, the lawyer's services or the law firm's services. A communication violates this Rule if it:

- (A) contains a material misrepresentation of fact or law;*
- (B) is false, misleading or deceptive;*
- (C) fails to disclose material information necessary to prevent the information supplied from being false, misleading or deceptive;*
- (D) contains a reference or testimonial to past successes or results obtained, except as allowed in the Rule regulating information about a lawyer's services provided upon request;*
- (E) promises results;*
- (F) states or implies that the lawyer can achieve results by means that violate the Rules of Professional Conduct or other law;*
- (G) compares the lawyer's services with other lawyers' services, unless the comparison can be factually substantiated;*
- (H) contains a paid testimonial or endorsement, unless the fact of payment is disclosed;*

(I) includes a portrayal of a client by a non-client without disclaimer of such, as required by Rule 7.2(c)(10), or the reenactment of any events or scenes or pictures that are not actual or authentic without disclaimer of such, as required by Rule 7.2(c)(10);

(J) includes the portrayal of a judge or a jury, the portrayal of a lawyer by a non-lawyer, the portrayal of a law firm as a fictionalized entity, the use of a fictitious name to refer to lawyers not associated together in a law firm, or otherwise implies that lawyers are associated in a law firm if that is not the case;

(K) resembles a legal pleading, notice, contract or other legal document;

(L) utilizes a nickname, moniker, motto or trade name that states or implies an ability to obtain results in a matter; or

(M) fails to comply with Rule 1.8(e)(4)(iii).

(2) Prohibited Visual and Verbal Portrayals and Illustrations. A lawyer shall not include in any advertisement or unsolicited written communication any visual or verbal descriptions, depictions, illustrations (including photographs) or portrayals of persons, things, or events that are false, misleading or deceptive.

(3) Advertising Areas of Practice. A lawyer or law firm shall not state or imply in advertisements or unsolicited written communications that the lawyer or law firm currently practices in an area of practice when that is not the case.

(4) Stating or Implying Louisiana State Bar Association Approval. A lawyer or law firm shall not make any statement that directly or impliedly indicates that the communication has received any kind of approval from The Louisiana State Bar Association.

(5) Communication of Fields of Practice. A lawyer may communicate the fact that the lawyer does or does not practice in particular fields of law. A lawyer shall not state or imply that the lawyer is “certified,” “board certified,” an “expert” or a “specialist” except as follows:

(A) Lawyers Certified by the Louisiana Board of Legal Specialization. A lawyer who complies with the Plan of Legal Specialization, as determined by the Louisiana Board of Legal Specialization, may inform the public and other lawyers of the lawyer's certified area(s) of legal practice. Such communications should identify the Louisiana Board of Legal Specialization as the certifying organization and may state that the lawyer is “certified,” “board certified,” an “expert in (area of certification)” or a “specialist in (area of certification).”

(B) Lawyers Certified by Organizations Other Than the Louisiana Board of Legal Specialization or Another State Bar. A lawyer certified by an organization other than the Louisiana Board of Legal

Specialization or another state bar may inform the public and other lawyers of the lawyer's certified area(s) of legal practice by stating that the lawyer is “certified,” “board certified,” an “expert in (area of certification)” or a “specialist in (area of certification)” if:

(i) the lawyer complies with Section 6.2 of the Plan of Legal Specialization for the Louisiana Board of Legal Specialization; and,

(ii) the lawyer includes the full name of the organization in all communications pertaining to such certification. A lawyer who has been certified by an organization that is accredited by the American Bar Association is not subject to Section 6.2 of the Plan of Legal Specialization.

(C) Certification by Other State Bars. A lawyer certified by another state bar may inform the public and other lawyers of the lawyer's certified area(s) of legal practice and may state in communications to the public that the lawyer is “certified,” “board certified,” an “expert in (area of certification)” or a “specialist in (area of certification)” if:

(i) the state bar program grants certification on the basis of standards reasonably comparable to the standards of the Plan of Legal Specialization, as determined by the Louisiana Board of Legal Specialization; and,

(ii) the lawyer includes the name of the state bar in all communications pertaining to such certification.

(6) Disclosure of Liability for Expenses Other Than Fees. Every advertisement and unsolicited written communication that contains information about the lawyer's fee, including those that indicate no fee will be charged in the absence of a recovery, shall disclose whether the client will be liable for any costs and/or expenses in addition to the fee.

(7) Period for Which Advertised Fee Must be Honored. A lawyer who advertises a specific fee or range of fees for a particular service shall honor the advertised fee or range of fees for at least ninety days from the date last advertised unless the advertisement specifies a shorter period; provided that, for advertisements in the yellow pages of telephone directories or other media not published more frequently than annually, the advertised fee or range of fees shall be honored for no less than one year following publication.

(8) Firm Name. A lawyer shall not advertise services under a name that violates the provisions of Rule 7.10.

(9) Language of Required Statements. Any words or statements required by these Rules to appear in an advertisement or unsolicited written communication must appear in the same language in which the advertisement or unsolicited written communication appears. If more than one language is used in an advertisement or unsolicited written communication, any words or

statements required by these Rules must appear in each language used in the advertisement or unsolicited written communication.

(10) Appearance of Required Statements, Disclosures and Disclaimers. Any words or statements required by these Rules to appear in an advertisement or unsolicited written communication must be clearly legible if written or intelligible if spoken aloud.

All disclosures and disclaimers required by these Rules shall be clear and conspicuous. Written disclosures and disclaimers shall use a print size at least as large as the largest print size used in the advertisement or unsolicited written communication, and, if televised or displayed electronically, shall be displayed for a sufficient time to enable the viewer to easily see and read the disclosure or disclaimer. Spoken disclosures and disclaimers shall be plainly audible and spoken at the same or slower rate of speed as the other spoken content of the advertisement. All disclosures and disclaimers used in advertisements that are televised or displayed electronically shall be both spoken aloud and written legibly.

(11) Payment by Non-Advertising Lawyer. No lawyer shall, directly or indirectly, pay all or a part of the cost of an advertisement by a lawyer not in the same firm.

(12) Referrals to Another Lawyer. If the case or matter will be, or is likely to be, referred to another lawyer or law firm, the communication shall include a statement so advising the prospective client.

(13) Payment for Recommendations; Lawyer Referral Service Fees. 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 or recorded communication permitted by these Rules, and may pay the usual charges of a lawyer referral service or other legal service organization only as follows:

(A) A lawyer may pay the usual, reasonable and customary charges of a lawyer referral service operated by the Louisiana State Bar Association, any local bar association, or any other not-for-profit organization, provided the lawyer referral service:

(i) refers all persons who request legal services to a participating lawyer;

(ii) prohibits lawyers from increasing their fee to a client to compensate for the referral service charges; and

(iii) fairly and equitably distributes referral cases among the participating lawyers, within their area of practice, by random allotment or by rotation.

Rule 7.4 Direct contact with prospective clients

(a) Solicitation. Except as provided in subdivision (b) of this Rule, a lawyer shall not solicit professional employment from a prospective client with whom the lawyer

has no family or prior lawyer-client relationship, in person, by person to person verbal telephone contact, through others acting at the lawyer's request or on the lawyer's behalf or otherwise, when a significant motive for the lawyer's doing so is the lawyer's pecuniary gain. A lawyer shall not permit employees or agents of the lawyer to solicit on the lawyer's behalf. A lawyer shall not enter into an agreement for, charge, or collect a fee for professional employment obtained in violation of this Rule. The term "solicit" includes contact in person, by telephone, telegraph, or facsimile, or by other communication directed to a specific recipient and includes (i) any written form of communication directed to a specific recipient and not meeting the requirements of subdivision (b) of this Rule, and (ii) any electronic mail communication directed to a specific recipient and not meeting the requirements of subdivision (c) of Rule 7.6. For the purposes of this Rule 7.4, the phrase "prior lawyer-client relationship" shall not include relationships in which the client was an unnamed member of a class action.

(b) Written Communication Sent on an Unsolicited Basis.

(1) A lawyer shall not send, or knowingly permit to be sent, on the lawyer's behalf or on behalf of the lawyer's firm or partner, an associate, or any other lawyer affiliated with the lawyer or the lawyer's firm, an unsolicited written communication directly or indirectly to a prospective client for the purpose of obtaining professional employment if:

(A) the written communication concerns an action for personal injury or wrongful death or otherwise relates to an accident or disaster involving the person to whom the communication is addressed or a relative of that person, unless the accident or disaster occurred more than thirty days prior to the mailing of the communication;

(B) it has been made known to the lawyer that the person does not want to receive such communications from the lawyer;

(C) the communication involves coercion, duress, fraud, overreaching, harassment, intimidation, or undue influence;

*(D) the communication contains a false, misleading or deceptive statement or claim or is improper under subdivision (c)(1) of Rule 7.2;
or*

(E) the lawyer knows or reasonably should know that the physical, emotional, or mental state of the person makes it unlikely that the person would exercise reasonable judgment in employing a lawyer.

(2) Unsolicited written communications to prospective clients for the purpose of obtaining professional employment are subject to the following requirements:

(A) Unsolicited written communications to a prospective client are subject to the requirements of Rule 7.2.

(B) In instances where there is no family or prior lawyer-client relationship, a lawyer shall not initiate any form of targeted solicitation,

whether a written or recorded communication, of a person or persons known to need legal services of a particular kind provided by the lawyer in a particular matter for the purpose of obtaining professional employment unless such communication complies with the requirements set forth below and is not otherwise in violation of these Rules:

(i) Such communication shall state clearly the name of at least one member in good standing of the Association responsible for its content.

(ii) The top of each page of such written communication and the lower left corner of the face of the envelope in which the written communication is enclosed shall be plainly marked "ADVERTISEMENT" in print size at least as large as the largest print used in the written communication. If the written communication is in the form of a self-mailing brochure or pamphlet, the "ADVERTISEMENT" mark shall appear above the address panel of the brochure or pamphlet and on the inside of the brochure or pamphlet. Written communications solicited by clients or prospective clients need not contain the "ADVERTISEMENT" mark.

(C) Unsolicited written communications mailed to prospective clients shall not resemble a legal pleading, notice, contract or other legal document and shall not be sent by registered mail, certified mail or other forms of restricted delivery.

(D) If a lawyer other than the lawyer whose name or signature appears on the communication will actually handle the case or matter, any unsolicited written communication concerning a specific matter shall include a statement so advising the client.

(E) Any unsolicited written communication prompted by a specific occurrence involving or affecting the intended recipient of the communication or a family member of that person shall disclose how the lawyer obtained the information prompting the communication.

(F) An unsolicited written communication seeking employment by a specific prospective client in a specific matter shall not reveal on the envelope, or on the outside of a self-mailing brochure or pamphlet, the nature of the client's legal problem.

Louisiana courts have held that the advertising of legal services is clearly a "trade" or "commerce" within the Unfair Trade Practices and Consumer Protection Law, R.S. 51:1401, *et seq.*¹⁵ Therefore, advertising by attorneys is also subject to that Law. See the False or Fraudulent Advertising section in Chapter II.

¹⁵ *Reed v. Allison & Perrone*, 376 So.2d 1067 (La. App. 4th Cir. 1979).

Barbers

Barbers are prohibited, under R.S. 37:372, from:

- (4) *Advertising by means of false or deceptive statements.*
- (5) *Advertising, practicing, or attempting to practice under a name other than one's own name or trade name.*

A violation of these provisions can result in the suspension, revocation or refusal to issue or renew the certificate of registration for a barber.

Chiropractors/Chiropractic Management Consultants

Chiropractors are prohibited, under R.S. 37:2816, from the:

- (14) *solicitation of professional patronage by misleading, deceptive, or self-laudatory advertising including that which is misleading, deceptive, or self-laudatory to the patient, insured, or his insurer.*

A violation of this provision can result in the suspension, revocation or refusal to renew the license or certificate of a practicing chiropractor.

Chiropractic management consultants are prohibited, under R.S. 37:2830.4, from publishing or causing to be published advertisements in newspapers unless the advertisement contains the registered name and address of the chiropractic management consultant.

Dentists

Advertising by dentists is governed by R.S. 37:775, which provides:

§775. Unprofessional conduct defined

As used in this Chapter, unprofessional conduct means:

- (1) *Advertisement of fees for or of free dental services without:*
 - (a) *Fully disclosing all procedures to be included by the dentist in the advertised service, including but not limited to necessary diagnosis, radiographs, restorative treatment, laboratory fees, and post-operative care.*
 - (b) *Fully disclosing that procedures which are customarily included in the service are not included in the service offered for the advertised fee, if such is the case.*
 - (c) *Disclosing within the advertisement the name of the advertising dentist. If one member of an association/partnership advertises, the names of all partners and dentist employees must also appear therein. This is not to include the appearance of the names of those persons merely sharing space with the advertising dentist, but does include all dentists providing dental services to those responding to the advertisement.*
- (2) *Not including in advertisements the name which appears on the license or renewal certificate of the dentist or which is authorized under Chapter 11 of Title 12 of the Louisiana Revised Statutes of 1950, as amended, relative to*

professional dental corporations or the use in advertisements of any name other than that which appears in the license renewal certificate of the dentist or which is authorized under Chapter 11 of Title 12 of the Louisiana Revised Statutes of 1950, as amended, relative to professional dental corporations.

- (3) *Any communication about the dentist or the dentist's services which is false, misleading, or deceptive; or the omission of material information from any statement or claim about the dentist or the dentist's services.*
- (4)
 - (a) *Any communication for which the dentist does not have substantiation in hand at the time the claim is made.*
 - (b) *The failure to provide said substantiation or records of the content and dissemination of an advertisement to the board upon request.*
 - (c) *The failure to keep records of any communication or written statements and claims, including advertising copy, and substantiation for same for a period of two years from the date on which the particular statement or claim is made.*
- (5) *Any communication which is likely to create an unjustified expectation about results the dentist can achieve, or which states or implies that the dentist can achieve results by means that violate this Chapter, the rules and regulations of the board, or other law.*
- (6) *The practice of dentistry or the giving of a public demonstration of skill or methods of practicing dentistry in any place other than a clean, sanitary, and safe facility.*
- (7) *Directly or indirectly offering, giving, receiving, or agreeing to receive any fee or other consideration to or from a third party for the referral of a patient in connection with the performance of a dental service.*
- (8) *Advertising of denture prices which fails to include the following information:*
 - (a) *Whether or not the dentures are preformed or prefabricated.*
 - (b) *In the case of "immediate dentures," details of required adjustments and other necessary procedures, including charges to be made therefor.*
 - (c) *Fees for each different grade of denture which the advertiser may offer to persons who respond to the advertisement.*
 - (d) *The number of appliances included.*
 - (e) *The fact that the advertised price does not include upper and lower dentures, if such is the case. This disclosure must be made in type twice as large as any other type in a print advertisement or repeated three times in an audio advertisement at a decibel level no lower than the loudest level in the advertisement.*
- (9) *Advertising of dental services in any medium which has not been approved by the licensed dentist and which does not contain the dentist's full name, address, and telephone number.*

- (10) *The use of the name of any deceased or retired and licensed dentist or hygienist on any office door, directory, stationery, billhead, or any other means of communication any time after one year following the death or retirement from practice of said dentist or dental hygienist.*
- (11) (a) *The employment or engaging of the services of any person, firm, or corporation to construct, repair, furnish, supply, or reproduce a prosthetic appliance or any denture, orthodontic appliance, bridge, or other substitute for natural teeth without the dentist furnishing a written work order on a form approved by the board which shall contain:*
- (i) *The name and address of the person, firm, or corporation to which the work order is directed.*
 - (ii) *The patient's name or identification number, and if number is used, the patient's name must be written upon duplicate copy retained by the dentist.*
 - (iii) *The date on which the work order was written.*
 - (iv) *A description of the work to be done, including diagrams if necessary.*
 - (v) *Specification of the type and quality of materials to be used.*
 - (vi) *The signature of the dentist and number of his license.*
- (b) *The failure of the dentist to retain the original copy of such work orders so furnished for a period of two calendar years in addition to the current year.*
- (12) *The use, in connection with the practice of dentistry, of any practice which is prohibited by law.*
- (13) *Notwithstanding any provision of this Section, when it is required by this Section that an advertisement include the name of the advertising dentist as it appears on the license or renewal certificate of the dentist or the specialties of all dentists practicing within or under the name of a corporation, company, association, limited liability company, or trade name be disclosed in the advertisement, such requirement shall be deemed to be sufficiently satisfied if the names and specialties of all dentists practicing in, with or under the said corporation, company, association, limited liability company, or trade name are made available on an Internet web site fully disclosed in the advertisement, or are provided without delay to any individual requesting such information by contacting the advertiser at a telephone number also disclosed in the advertisement. Whether the advertisement is run by the corporation, company, association, limited liability company, or trade name, or any individual member practicing therein all dentists practicing in, with or under the corporation, company, association, limited liability company, or trade name shall be responsible for the content of the advertisement.*

Embalmers and Funeral Directors

Advertising by embalmers and funeral directors is governed by R.S. 37:846, which provides in part:

§846. Refusal to grant or renew licenses; revocation or suspension; grounds, hearings

A. *The board may refuse to grant, refuse to renew, or may suspend or revoke, any license when the applicant or licensee is found guilty of any of the following acts or omissions:*

* * *

(2) *Paying, giving or offering, directly or indirectly, orally or in writing, any money, credit, discount, gratuity or other thing of value as an inducement for the business of a prospective customer; provided that this prohibition shall not be in any way construed as prohibiting the execution or servicing by the parties thereto of any funeral service contract of the type recognized or required by any provisions of R.S. Title 22.*

* * *

(10) *Use in advertising or in the sale of merchandise or services, untruthful, deceptive, unethical, misleading or improbable statements, or any practice, offer or inducement prohibited by any provisions of this Section.*

Optometrists

Optometrists may have their certificates to practice suspended or revoked or have their renewal application denied, if they:

(20) *Engaged in false, misleading, or fraudulent advertising as defined by the board;*

(21) *Advertised or held himself out to be an optometrist without having a valid certificate issued by the board; or*

(23) *Advertised by including any reference, direct or indirect, to any controlled dangerous substances as provided for in Schedules III, IV, or V of the Uniform Controlled Dangerous Substances Law. R.S. 37:1061(A).*

The purpose of prohibiting the advertising of any price, credit, terms, or agreement with reference to the practice of optometry is to prevent “bait advertising” which draws prospective customers into an optometrist’s office for reasons other than his professional ability.¹⁶

The courts have interpreted these provisions relating to optometrists in the following cases:

An advertisement which stated that an optometrist’s prices were “popular” and “low,” the optometrist would not be undersold, glasses were not expensive, and just a few dollars would protect vision, violated the provision prohibiting the advertising of any price, credit, terms or

¹⁶ *Akin v. Louisiana State Board of Optometry Examiners*, 150 So.2d 807 (La. App. 3rd Cir. 1963), *aff’d*. 158 So.2d 833 (1964).

agreement with reference to the practice of optometry, even though statements contained in the advertisements were worded in general rather than specific terms.¹⁷

In a similar case, an optometrist who had advertised that replacements and repairs of broken glasses would be made without cost for a period of one year was held to have violated the prohibition against “advertising any price, credit, terms or agreements with reference to the practice of optometry.”¹⁸

Pharmacists

The prohibition against advertising applicable to pharmacists is found in R.S. 37:1241. It provides in part:

§1241. Refusal, restriction, suspension, or revocation of license

The board may....refuse to license, register, certify, or may refuse to renew, or may revoke...or suspend...the person who was issued the...license, certificate, or permit...upon proof that the person:

* * *

(19) Has engaged in false, misleading, or fraudulent advertising as defined by the board.

* * *

(21) Has advertised by including any reference, direct or indirect, to any controlled dangerous substances as provided for in Schedules II, III, IV, and V of R.S. 40:964.

Physicians, Surgeons, Osteopaths and Midwives

Advertising by physicians, surgeons, osteopaths and midwives is governed by R.S. 37:1285, which provides in part:

¹⁷ *Michon v. Louisiana State Board of Optometry Examiners*, 121 So.2d 565 (La. App. 2nd Cir. 1960).

¹⁸ *Aiken v. Louisiana State Board of Optometry Examiners*, supra.

§1285. Causes for nonissuance; suspension; revocation; or the imposition of restrictions; fines, reinstatement; publication of action

A. *The board may refuse to issue, or may suspend or revoke any license or permit, or impose probationary or other restrictions on any license or permit issued under this Part for the following causes:*

* * *

(7) *Solicitation of patients or self-promotion through advertising or communication, public or private, which is fraudulent, false, deceptive, or misleading;*

* * *

(19) *Soliciting, accepting, or receiving anything of economic value in return for and based on the referral of patients to another person, firm, or corporation or in return for the prescription of medications or medical devices....*

FAIR TRADE LAWS

Fair trade laws¹⁹ are enacted to prohibit unfair methods of competition in commerce, including the advertising and selling of certain merchandise below cost in order to attract patronage. In Louisiana, the Unfair Sales Law is found at R.S. 51:421, *et seq.* R.S. 51:422 provides as follows:

§422. Sales at less than cost unlawful

A. *Any advertising, offer to sell, or sale of any merchandise, either by retailers or wholesalers, at less than cost as defined by this Sub-part plus any state, county or municipal sales tax that is then payable under any existing law or ordinance, with the intent or effect of inducing the purchase of other merchandise or of unfairly diverting trade from a competitor or impairing fair competition and thus injuring public welfare, is unfair competition and contrary to and violative of public policy as express in this Sub-part, where the result of such advertising, offer or sale is to tend to deceive any purchaser or prospective purchaser, or to substantially lessen competition, or to unreasonably restrain trade, or to tend to create monopoly in any line of commerce.*

B. *Any sale, transfer or exchange between wholesale outlets or between retail outlets or between wholesale and retail outlets operating a separate business or under a separate name at a price less than the minimum herein prescribed, either through the allowance of a discount or by the payment of a commission or through any other device used to reduce the minimum price shall constitute a violation of this Sub-part.*

C. *Any wholesaler or retailer who furnishes labor or services to a purchaser to aid or assist in the conduct of the purchaser's business shall be deemed to be in violation of this Sub-part where the value of the services reduces*

¹⁹ In Louisiana, these laws are known as the "Unfair Sales Law," R.S. 51:421, *et seq.*

the selling price of any given commodity below the minimum price as herein established, and this provision shall be effective irrespective of whether or not the person or persons performing such services be in the employ of the seller.

The penalty for violating the Unfair Sales Law is found in R.S. 51:423, which provides:

§423. Violation; penalty; prima facie evidence; revocation of license or permit

No retailer or wholesaler shall advertise, offer to sell or sell at retail any item of merchandise at less than cost to the retailer or less than cost to the wholesaler respectively.

Whoever violates this Section shall be fined not less than twenty-five dollars nor more than five hundred dollars for each offense and each offense shall constitute a separate violation. Proof of any advertising, offer to sell or sale by any retailer or wholesaler in contravention of the policy of this Sub-part shall be prima facie evidence of a violation.

In addition, the collector of revenue may suspend or revoke any existing license or permit granted to any wholesale or retail dealer after notice and opportunity to be heard, and in conformity to the rules and regulations made by the collector of revenue to carry out the provisions of this Sub-part.

The Unfair Sales Law, in R.S. 51:424, allows for injunctive relief and reasonable attorney's fees under certain circumstances, as follows:

§424. Injunctions

In addition, the courts of this state may prevent and restrain violations of this Sub-part, and district attorneys, in the respective districts, shall institute proceedings to prevent and restrain violations. Any person damaged, or who is threatened with loss or injury by reason of a violation of this Sub-part may sue for and have injunctive relief against any damage, or threatened loss or injury. Any person, successful in a suit for injunctive relief under this Section, shall be allowed a reasonable attorney's fee; and further, the right as herein established shall exist in favor of any duly organized and existing trade organization and there shall exist damages and injury to such organization where it is shown that any one or more individual members thereof has been damaged by a violation of this Sub-part.

R.S. 51:426 provides for transactions which are exempt from the Unfair Sales Law as follows:

§426. Exemptions

The provisions of this Sub-part shall not apply to sales at retail or sales at wholesale:

- (1) Where merchandise is sold in bona fide clearance sales, if advertised, marked, and sold as such;*
- (2) Where perishable merchandise must be sold promptly in order to forestall loss;*

- (3) *Where merchandise is imperfect or damaged, or is being discontinued and is advertised, marked and sold as such;*
- (4) *Where merchandise is sold upon the final liquidation of any business;*
- (5) *Where merchandise is sold for charitable purposes or to relief agencies;*
- (6) *Where merchandise is sold on contract to departments of the government or governmental institutions;*
- (7) *Where merchandise is sold in good faith to meet that competition which permits a competitor to sell at a lesser price where such competitor is able to do so without violating the terms and conditions of this Sub-part;*
- (8) *Where merchandise is sold by any officer acting under the order or direction of any court; and*
- (9) *Where the merchandise is sold by the manufacturer or producer thereof.*

LIABILITY OF ADVERTISING AGENCY

Advertising agencies are generally utilized in the placement of advertisements with newspapers. The advertising client (principal) retains an advertising agency to place advertisements in the newspaper. The advertising agency generally discloses its authority to the newspaper and very seldom, if ever, personally guarantees the payment for the placement of the advertising. Under these circumstances, Louisiana law is clear that the advertising agency, who has communicated its authority to the newspaper is not responsible for the payment for running the advertisement unless the advertising agency has entered into a personal guarantee.

Louisiana Civil Code Articles 3016 and 3017 provide:

Art. 3016. Disclosed mandate and principal

A mandatary who contracts in the name of the principal within the limits of his authority does not bind himself personally for the performance of the contract.

Art. 3017. Undisclosed mandate

A mandatary who contracts in his own name without disclosing his status as a mandatary binds himself personally for the performance of the contract.

In these articles, the “mandatary” is the advertising agency.

*Tri-Star Business Forms and Printing, Inc. v. Advertising Group, Inc.*²⁰ involved the printer suing the advertising agency to collect the debt owed by the bankrupt client of the agency. The evidence presented at trial proved that the advertising agency had not exceeded its authority and had not agreed to pay the debt, whether as the principal debtor or as a guarantor. Therefore, the Second Circuit held that the advertising agency was legally absolved of liability to Tri-Star for the work that Tri-Star had performed on behalf of the advertising agency’s client (principal).

In *Texoma Broadcasters v. Hospital Corporation of America*,²¹ the Third Circuit held that the hospital (principal) was liable to the broadcasters for advertising services which were unpaid

²⁰ 606 So.2d 1382 (La. App. 2nd Cir. 1992).

²¹ 542 So.2d 780 (La. App. 3rd Cir. 1989).

by the hospital's advertising agency, even though the advertising agency had been paid a portion of the money by the hospital for the advertising placed on its behalf. The Third Circuit's decision resulted in the hospital being required to pay about two-thirds of the advertising bills twice, once to the advertising agency and then a second time to the broadcasters. Therefore, under La. Civil Code Arts. 3012 and 3013, advertising agencies are generally not liable for the placement of advertising if the agency has disclosed its authority and has not entered into a personal guarantee of the debt.

ADVERTISING AND EMPLOYMENT PRACTICES

Both federal and Louisiana law make it unlawful for an employer to print or publish, or cause to be printed or published, an advertisement which indicates any preference, limitation, specification, or discrimination based on certain factors, except under limited circumstances.

Age Discrimination

29 U.S.C. §623(e) provides:

(e) Printing or publication of notice or advertisement indicating preference, limitation, etc.

It shall be unlawful for an employer, labor organization, or employment agency to print or publish, or cause to be printed or published, any notice or advertisement relating to employment by such an employer or membership in or any classification or referral for employment by such a labor organization, or relating to any classification or referral for employment by such an employment agency, indicating any preference, limitation, specification, or discrimination based on age.²²

However, 29 U.S.C. §623(f) provides, in pertinent part:

(f) Lawful practices, age an occupational qualification; other reasonable factors; ...

It shall not be unlawful for an employer, employment agency, or labor organization --

(1) To take any action otherwise prohibited under Subsections...(e) of this section where age is a bona fide occupational qualification reasonably necessary to the normal operation of the particular business, or where the differentiation is based on reasonable factors other than age.....

Therefore, an advertisement that indicates any preference, limitation, specification, or discrimination, based on age, is only lawful where age is a bona fide occupational qualification reasonably necessary to the normal operation of the particular business or where the differentiation is based on reasonable factors other than age.

In 1978, Louisiana adopted R.S. 23:311, *et seq.*, its own version of the Age Discrimination in Employment Act. The language found in R.S. 23:312(E) and (F) are substantially similar to that

²² In *E.E.O.C. v. Marion Motel Associates*, 763 F.Supp. 1338 (W.D.N.C. 1991), the employer acted unlawfully in causing to be published an advertisement seeking "young, energetic persons" to apply for employment.

found in 29 U.S.C. §623(e) and (f). In *Belanger v. Keydril Company*,²³ the Federal District Court held that, although the employer generally may have been covered by the Federal Age Discrimination in Employment Act (29 U.S.C. §621, *et seq.*), such coverage did not extend to its employees working in foreign countries, and did not preclude application of the Louisiana Age Discrimination in Employment Act.

Discrimination Based on Religion, Sex and National Origin

42 U.S.C. §2000e-3(b) provides:

Printing or publication of notices or advertisements indicating prohibited preference, limitation, specification, or discrimination; occupational qualification exception

* * *

- (b) *It shall be an unlawful employment practice for an employer, labor organization, employment agency, or joint labor-management committee controlling apprenticeship or other training or retraining, including on-the-job training programs, to print or publish or cause to be printed or published any notice or advertisement relating to employment by such an employer or membership in or any classification or referral for employment by such a labor organization, or relating to any classification or referral for employment by such an employment agency, or relating to admission to, or employment in, any program established to provide apprenticeship or other training by such a joint labor-management committee, indicating any preference, limitation, specification, or discrimination, based on race, color, religion, sex, or national origin, except that such a notice or advertisement may indicate a preference, limitation, specification, or discrimination based on religion, sex, or national origin when religion, sex, or national origin is a bona fide occupational qualification for employment.*

Therefore, an advertisement may indicate a preference, limitation, specification, or discrimination based on religion, sex or national origin when these factors are bona fide occupational qualifications for employment.

In *Hailes v. United Airlines*,²⁴ the Federal Fifth Circuit Court of Appeals held that an airline advertisement for “stewardesses” placed in the “help wanted-female” column of newspaper, without a corresponding advertisement in the “help wanted-male” column, indicated an improper preference for females which cannot be neutralized by a statement that the airline was an “equal opportunity employer.” However, it is important to note that, in *Brush v. San Francisco Newspaper Printing Company*,²⁵ the Federal Ninth Circuit Court of Appeal held that a newspaper publisher was not an “employment agency” under 42 U.S.C. §2000e-3, and therefore, the use of employment advertisement classifications, “male” and “female,” did not violate 42 U.S.C. §2000e-3.

²³ 596 F.Supp. 823 (D.C. 1984).

²⁴ 464 F.2d 1006 (5th Cir. 1972).

²⁵ 469 F.2d 89 (9th Cir. 1972), *cert. denied*, 410 U.S. 943, 93 S.Ct. 1369.

Although Louisiana has adopted a specific statute, R.S. 23:1006, making it unlawful to discriminate in employment because of race, color, religion, sex or national origin, the Louisiana statute does not contain a specific provision regarding advertising. Therefore, it is unclear how R.S. 23:332 applies, if at all, to advertising by employers.

NOTICE BY SEXUAL OFFENDERS

Louisiana law requires the publication of notice by sexual offenders under certain circumstances. R.S. 15:542.1 provides as follows:

§542.1 Registration of sex offenders

- A. *Any adult residing in this state who has pled guilty to, has been convicted of, or where adjudication has been deferred or withheld for the perpetration or attempted perpetration of, or conspiracy to commit, a sex offense as defined in R.S. 15:541(14.1) or a criminal offense against a minor as defined in R.S. 15:541(9) shall be required to provide the following notifications:*
- (1) *Give notice of the crime for which he was convicted, his name, residential address, a description of his physical characteristics as provided in R.S. 15:542(C)(1), and a photograph or copy thereof to all of the following:*
 - (a) *At least one person in every residence or business within a one-mile radius in a rural area and a three-tenths of a mile radius in an urban or suburban area of the address of the residence where the offender will reside upon release, including all adults residing in the residence of the offender.*
 - (b) (i) *The superintendent of the school district where they will reside, who shall notify the principal of every school located within a one-mile radius of the address where the offender will reside and may notify the principals of other schools as he deems appropriate. The notice sent by the superintendent shall be accompanied by two clear, recent photographs, or a clear photocopy thereof, of the offender. The photographs, which shall be provided by the offender, shall be taken after release and within sufficient time to accompany the notification which is required under the provisions of this Chapter. The principal of any such school, upon receipt of the notification from the superintendent pursuant to the provisions of this Subparagraph, shall post notices at the school, in conspicuous areas accessible by all students attending the school, which contain a photograph of the offender and which state that the offender's name, address, and a statement on the notice, commensurate with the education level of the school, which in the discretion of the principal, appropriately notifies the students of the potential danger of the offender.*

- (ii) *Failure of the superintendent or principal to comply with the provisions of this Subparagraph shall not be construed to impose civil liability on any person.*
 - (c) *The lessor, landlord, or owner of the residence or the property on which he resides.*
 - (d) *The superintendent of any park, playground, or recreation districts within the designated area where the offender will reside, who shall notify the custodians of the parks, playgrounds, and recreational facilities in the designated area and may notify the custodians of other parks, playgrounds, and recreational facilities as he deems appropriate. The custodian of any such park, playground, and recreational facility, upon receipt of the notification, shall post notices in conspicuous areas at the park, playground, or recreational facility which state the offender's name, address, and the crime for which he was convicted. Failure of the superintendent or custodian to comply with the provisions of this Subparagraph shall not be construed to impose civil liability on any person. The notice sent by the superintendent shall be accompanied by two clear, recent photographs, or a clear photocopy thereof, of the offender. The photographs, which shall be provided by the offender, shall be taken after release and within sufficient time to accompany the notification which is required under the provisions of this Chapter.*
 - (e) *Notwithstanding the provisions of Paragraph (1) of this Subsection, persons convicted of R.S. 14:89(A)(2) shall not be required to furnish a photograph as required by that Paragraph.*
- (2) (a) *Give notice of the crime for which he was convicted, his name, jurisdiction of conviction, a description of his physical characteristics as required by this Section, and his physical address by mail to all people residing within the designated area within twenty-one days of the sentencing or release from confinement or within twenty-one days of establishing residency in the locale where the offender plans to have his domicile, and the notice shall be published on two separate days within the applicable period provided for herein, without cost to the state, in the official journal of the governing authority of the parish where the defendant plans to reside and, if ordered by the sheriff or police department or required by local ordinance, in a newspaper which meets the requirements of R.S. 43:140(3) for qualification as an official journal and which has a larger or smaller circulation in the parish than the official journal. The notice provided to the official journal or other designated newspaper pursuant to this Subparagraph shall also include a recent photograph of the offender or a clear photocopy of a recent photograph of the offender.*

- (b) *Those persons required to provide community notification pursuant to the provisions of this Section shall provide such community notification every five years from the date of the previous notification.*
 - (c) *The sheriff or police department may order that the notice be published in a newspaper which meets the requirements of R.S. 43:140(3) for qualification as an official journal and which has a larger circulation in the parish than the official journal.*
 - (d) *Notwithstanding the provisions of Subparagraphs (a) and (b) of this Paragraph, persons convicted of R.S. 14:92(A)(7) shall not be required to publish notice of the crime for which they were convicted in the official journal or any newspaper required by those Subparagraphs.*
- (3) *Give any other notice deemed appropriate by the court in which the defendant was convicted of the offense that subjects him to the duty to register, including but not limited to signs, handbills, bumper stickers, or clothing labeled to that effect.*
 - (4) *State under oath, at the time of sentencing, where he will reside after sentencing or release.*
 - (5) *Post the number of his physical address in a conspicuous place on the outside of his residence. The posted number shall be prominently displayed and shall be of sufficient size and legibility such that it will be visible to an ordinarily observant person approaching the residence during the daylight hours.*
- B. (1) *Any person required to register pursuant to R.S. 15:542 who provides recreational instruction to persons under the age of seventeen years shall post a notice in the building or facility where such instruction is being given. This notice shall contain the name and photograph of the sex offender, the date and jurisdiction of conviction, and the crime for which he was convicted. Such notification shall be prominently displayed and shall be of sufficient size to alert persons entering such building or facility that the recreational instructor is a convicted sex offender.*
 - (2) *For purposes of this Subsection, "recreational instruction" refers to instruction or lessons on noneducational activities, including but not limited to martial arts, dancing, theater, and music.*
- C. *Any juvenile required to register in accordance with the provisions of this Chapter shall be exempt from any notification requirements of this Section except for the notification required by the provisions of Subsection B of this Section.*
- D. (1) *Any person who is required to register pursuant to the provisions of this Chapter, who is otherwise not prohibited from using a networking website, and who creates a profile or who uses the functionality of a*

networking website to contact or attempt to contact other networking website users shall include in his profile for the networking website as indication that he is a sex offender or child predator and shall include notice of the crime for which he was convicted, the jurisdiction of conviction, a description of his physical characteristics as required by this Section, and his residential address. The person shall ensure that this information is displayed in his profile for the networking website and that such information is visible to, or is able to be viewed by, other users and visitors of the networking website.

- (2) (a) *For purposes of this Subsection, “networking website” means an Internet website, the purpose of which is social interaction with other networking website users, which contains profile web pages of the members of the website that include the names or nicknames of such members, that allows photographs and any other personal or personality identifying information to be placed on the profile web pages by such members, and which provides links to other profile web pages on the networking website of friends or associates of such members that can be accessed by other members or visitors to the website. A networking website provides members of, or visitors to, such website the ability to leave messages or comments on the profile web page that are visible to all or some visitors to the profile web page and may also include a form of electronic mail for members of the networking website.*
- (b) *For purposes of this Subsection, “networking website” shall not include any of the following:*
- (i) *An Internet website the primary purpose of which is the facilitation of commercial transactions involving goods or services between its members or visitors.*
 - (ii) *An Internet website the primary purpose of which is the dissemination of news.*
 - (iii) *An Internet website of a governmental entity.*

R.S. 15:574.4 provides:

§574.4. Parole; eligibility

- A. (1) (a) *Unless eligible at an earlier date and except as provided for in Subparagraph (b) of this Paragraph and Subsection B of this Section, a person, otherwise eligible for parole, convicted of a first felony offense shall be eligible for parole consideration upon serving one-third of the sentence imposed. Upon conviction of a second felony offense, such person shall be eligible for parole consideration upon serving one-half of the sentence imposed. A person convicted of a third or subsequent felony offense shall not be eligible for parole.*

- (b)
 - (i) *Notwithstanding the provisions of Subparagraph (a) of this Paragraph, a person, otherwise eligible for parole, convicted of a first felony offense shall be eligible for parole consideration upon serving twenty-five percent of the sentence imposed. The provisions of this Subparagraph shall not apply to any person who has been convicted of a crime of violence as defined in R.S. 14:2(B), has been convicted of a sex offense as defined in R.S. 15:541, has been sentenced as a habitual offender pursuant to R.S. 15:529.1, or is otherwise ineligible for parole.*
 - (ii) *Notwithstanding the provisions of Subparagraph (a) of this Paragraph, a person, otherwise eligible for parole, convicted of a second felony offense shall be eligible for parole consideration upon serving thirty-three and one-third percent of the sentence imposed. The provisions of this Item shall not apply to any person who has been convicted of a crime of violence as defined in R.S. 14:2(B), has been convicted of a sex offense as defined in R.S. 15:541, has been sentenced as a habitual offender pursuant to R.S. 15:529.1, or otherwise ineligible for parole.*
 - (iii) *Any person eligible for parole pursuant to the provisions of this Subparagraph shall not be eligible for parole pursuant to the provisions of Subparagraph (a) of this Paragraph.*
 - (iv) *Nothing in this Subparagraph shall prevent a person from reapplying for parole as provided by rules adopted in accordance with the Administrative Procedure Act.*
- (2) *Notwithstanding the provisions of Paragraph (1) of this Subsection or any other law to the contrary, unless eligible for parole at an earlier date, a person committed to the Department of Public Safety and Corrections for a term or terms of imprisonment with or without benefit of parole for thirty years or more shall be eligible for parole consideration upon serving at least twenty years of the term or terms of imprisonment in actual custody and upon reaching the age of forty-five. This provision shall not apply to a person serving a life sentence unless the sentence has been commuted to a fixed term of years. The provisions of this Paragraph shall not apply to any person who has been convicted under the provisions of R.S. 14:64.*
- (3) *Notwithstanding the provisions of Paragraph (A)(1) or (2) of this Section or any other provision of law to the contrary, unless eligible for parole at an earlier date, a person committed to the Department of Public Safety and Corrections serving a life sentence for the production, manufacturing, distribution, or dispensing or possessing with intent to*

produce, manufacture, or distribute heroin shall be eligible for parole consideration upon serving at least fifteen years of imprisonment in actual custody.

(4) Notwithstanding any other provision of law to the contrary, unless eligible for parole at an earlier date, a person committed to the Department of Public Safety and Corrections for a term or terms of imprisonment with or without benefit of parole who has served at least ten years of the term or terms of imprisonment in actual custody shall be eligible for parole consideration upon reaching the age of sixty years if all of the following conditions are met:

(a) The offender has not been convicted of a crime of violence as defined in R.S. 14:2(B) or a sex offense as defined in R.S. 15:541, or convicted of an offense which would constitute a crime of violence as defined in R.S. 14:2(B) or a sex offense as defined in R.S. 15:541, regardless of the date of conviction.

(b) The offender has not committed any disciplinary offenses in twelve consecutive months prior to the parole eligibility date.

(c) The offender has completed the mandatory minimum of one hundred hours of prerelease programming in accordance with the provisions of R.S. 15:827.1 if such programming is available at the facility where the offender is incarcerated.

(d) The offender has completed substance abuse treatment as applicable.

(e) The offender has obtained a GED credential, unless the offender has previously obtained a high school diploma or is deemed by a certified educator as being incapable of obtaining a GED credential due to a learning disability. If the offender is deemed incapable of obtaining a GED credential, the offender shall complete at least one of the following: a literacy program, an adult basic education program, or a job-skills training program.

(f) The offender has obtained a low-risk level designation determined by a validated risk assessment instrument approved by the secretary of the Department of Public Safety and Corrections.

B. (1) No person shall be eligible for parole consideration who has been convicted of armed robbery and denied parole eligibility under the provisions of R.S. 14:64. Except as provided in Paragraph (2) of this Subsection, no prisoner serving a life sentence shall be eligible for parole consideration until his life sentence has been commuted to a fixed term of years. No prisoner sentenced as a serial sexual offender shall be eligible for parole. No prisoner may be paroled while there is pending against him any indictment or information for any crime suspected of having been committed by him while a prisoner.

Notwithstanding any other provisions of law to the contrary, a person convicted of a crime of violence and not otherwise ineligible for parole shall serve at least eighty-five percent of the sentence imposed, before being eligible for parole. The victim or victim's family shall be notified whenever the offender is to be released provided that the victim or victim's family has completed a Louisiana victim notice and registration form as provided in R.S. 46:1841 et seq., or has otherwise provided contact information and has indicated to the Department of Public Safety and Corrections, Crime Victims Services Bureau, that they desire such notification.

(2) *Notwithstanding any provision of law to the contrary, any person serving a life sentence, with or without the benefit of parole, who has not been convicted of a crime of violence as defined by R.S. 14:2(B), a sex offense as defined by R.S. 15:541, or an offense, regardless of the date of conviction, which would constitute a crime of violence as defined by R.S. 14:2(B) or a sex offense as defined by R.S. 15:541, shall be eligible for parole consideration as follows:*

(a) *If the person was at least eighteen years of age and under the age of twenty-five years at the time he was sentenced to life imprisonment, he shall be eligible for parole consideration if all of the following conditions are met:*

(i) *The person has served at least twenty-five years of the sentence imposed.*

(ii) *The person has obtained a low risk level designation determined by a validated risk assessment instrument approved by the secretary of the Department of Public Safety and Corrections.*

(iii) *The person has not committed any disciplinary offenses in the two consecutive months prior to the parole eligibility date.*

(iv) *The person has completed the mandatory minimum of one hundred hours of pre-release programming in accordance with the provisions of R.S. 15:827.1, if such programming is available.*

(v) *The person has completed substance abuse treatment, if applicable and such treatment is available.*

(vi) *The person has obtained a GED credential, unless the prisoner has previously obtained a high school diploma or is deemed by a certified educator as being incapable of obtaining a GED credential due to learning disability or because such programming is not available. If the prisoner is deemed incapable of obtaining a GED credential, the person shall complete at least one of the following: a*

literacy program, an adult basic education program, or a job skills training program.

(c) *If the person was at least thirty-five years of age and under the age of fifty years at the time he was sentenced to life imprisonment, he shall be eligible for parole consideration if all of the following conditions are met:*

(i) The person has served at least fifteen years of sentence imposed.

(ii) The person has obtained a low risk level designation determined by a validated risk assessment instrument approved by the secretary of the Department of Public Safety and Corrections.

(iii) The person has not committed any disciplinary offenses in the twelve consecutive months prior to the parole eligibility date.

(iv) The person has completed the mandatory minimum of one hundred hours of pre-release programming in accordance with the provisions of R.S. 15:827.1, if such programming is available.

(v) The person has completed substance abuse treatment, if applicable and such treatment is available.

(vi) The person has obtained a GED credential, unless the prisoner has previously obtained a high school diploma or is deemed by a certified educator as being incapable of obtaining a GED credential due to a learning disability or because such programming is not available. If the prisoner is deemed incapable of obtaining a GED credential, the person shall complete at least one of the following: a literacy program, and adult basic education program, or a job skills training program.

(d) *If the person was at least fifty years of age at the time he was sentenced to life imprisonment, he shall be eligible for parole consideration if all of the following conditions have been met:*

(i) The person has served at least ten years of the sentence imposed.

(ii) The person has obtained a low risk level designation determined by a validated risk assessment instrument approved by the secretary of the Department of Public Safety and Corrections.

(iii) The person has not committed any disciplinary offenses in the twelve consecutive months prior to the parole eligibility rate.

(iv) The person has completed the mandatory minimum of one hundred hours of pre-release programming in accordance with the provisions of R.S. 15:827.1, if such programming is available.

(v) The person has completed substance abuse treatment if applicable and such treatment is available.

(vi) The person has obtained a GED credential, unless the prisoner has previously obtained a high school diploma or is deemed by a certified educator as being incapable of obtaining a GED credential due to a learning disability or because such programming is not available. If the prisoner is deemed incapable of obtaining a GED credential, the person shall complete at least one of the following: a literacy program, and adult basic education program, or a job skills training program.

C. (1) *At such intervals as it determines, the board or a member thereof shall consider all pertinent information with respect to each prisoner eligible for parole, including the nature and circumstances of the prisoner's offense, his prison records, the presentence investigation report, any recommendations of the chief probation and parole officer, and any information and reports of data supplied by the staff. A parole hearing shall be held if, after such consideration, the board determines that a parole hearing is appropriate or if such hearing is requested in writing by its staff.*

(2) (a) *In cases where the offender has been convicted of, or where adjudication has been deferred or withheld for the perpetration or attempted perpetration of a violation of a sex offense as defined in R.S. 15:541 and parole is permitted by law and the offender is otherwise eligible, the board shall consider reports, assessments, and clinical information, as available, including any testing and recommendations by mental health professionals, as to all of the following:*

(i) Whether the offender has successfully completed the sex offender program.

(ii) Whether, in the expert's opinion, there is a likelihood that the offender will or will not repeat the criminal conduct and that the offender will or will not be a danger to society.

(b) The board shall render its decision ordering or denying the release of the prisoner on parole only after considering this clinical evidence where such clinical evidence is available.

D. (1) *Notwithstanding any provision of law to the contrary, any person serving a sentence of life imprisonment who was under the age of eighteen years at the time of the commission of the offense, except for a*

person serving a life sentence for a conviction of first degree murder (R.S. 14:30) or second degree murder (R.S. 14:30.1), shall be eligible for parole consideration pursuant to the provisions of this Subsection if all of the following conditions are met:

- (a) The offender has served thirty years of the sentence imposed.*
 - (b) The offender has not committed any disciplinary offenses in the twelve consecutive months prior to the parole eligibility date.*
 - (c) The offender has completed the mandatory minimum of one hundred hours of prerelease programming in accordance with R.S. 15:827.1.*
 - (d) The offender has completed substance abuse treatment as applicable.*
 - (e) The offender has obtained a GED certification, unless the offender has previously obtained a high school diploma or is deemed by a certified educator as being incapable of obtaining a GED certification due to learning disability. If the offender is deemed incapable of obtaining a GED certification, the offender shall complete at least one of the following:*
 - (i) A literacy program.*
 - (ii) An adult basic education program.*
 - (iii) A job skills training program.*
 - (f) The offender has obtained a low-risk level designation determined by a validated risk assessment instrument approved by the secretary of the Department of Public Safety and Corrections.*
 - (g) The offender has completed a reentry program to be determined by the Department of Public Safety and Corrections.*
 - (h) If the offender was convicted of aggravated rape, he shall be designated a sex offender and upon release shall comply with all sex offender registration and notification provisions as required by law.*
- (2) For each offender eligible for parole consideration pursuant to the provisions of this Subsection, the board shall meet in a three-member panel and each member of the panel shall be provided with and shall consider a written evaluation of the offender by a person who has expertise in adolescent brain development and behavior and any other relevant evidence pertaining to the offender.*
- (3) The panel shall render specific findings of fact in support of its decision.*

Code of Criminal Procedure Article 895 provides:

A. *When the court places a defendant on probation, it shall require the defendant to refrain from criminal conduct and to pay a supervision fee to defray the costs of probation supervision, and it may impose any specific conditions reasonably related to his rehabilitation, including any of the following. That the defendant shall:*

- (1) Make a full and truthful report at the end of each month;*
- (2) Meet his specified family responsibilities, including any obligations imposed in a court order of child support;*
- (3) Report to the probation officer as directed;*
- (4) Permit the probation officer to visit him at his home or elsewhere;*
- (5) Devote himself to an approved employment or occupation;*
- (6) Refrain from owning or possessing firearms or other dangerous weapons;*
- (7) Make reasonable reparation or restitution to the aggrieved party for damage or loss caused by his offense in an amount to be determined by the court;*
- (8) Refrain from frequenting unlawful or disreputable places or consorting with disreputable persons;*
- (9) Remain within the jurisdiction of the court and get the permission of the probation officer before making any change in his address or his employment; and*
- (10) Devote himself to an approved reading program at his cost if he is unable to read the English language.*
- (11) Perform community service work.*
- (12) Submit himself to available medical, psychiatric, mental health, or substance abuse examination or treatment or both when deemed appropriate and ordered to do so by the probation and parole officer.*
- (13) (a) Agree to searches of his person, his property, his place of residence, his vehicle, or his personal effects, or any or all of them, at any time, by the probation officer or the parole officer assigned to him, with or without a warrant of arrest or with or without a search warrant, when the probation officer or the parole officer has reasonable suspicion to believe that the person who is on probation is engaged in or has been engaged in criminal activity.*
 - (b) For those persons who have been convicted of a "sex offense" as defined in R.S. 15:541, agree to searches of his person, his property, his place of residence, his vehicle, or his personal effects, or any or all of them, at any time, by a law enforcement officer, duly commissioned in the parish or municipality where*

the sex offender resides or is domiciled, designated by his agency to supervise sex offenders, with or without a warrant of arrest or with or without a search warrant, when the officer has reasonable suspicion to believe that the person who is on probation is engaged in or has been engaged in criminal activity for which the person has not been charged or arrested while on probation.

- B. (1) *In felony cases, an additional condition of the probation may be that the defendant shall serve a term of imprisonment without hard labor for a period not to exceed two years.*
- (2) *In felony cases assigned to the drug division probation program pursuant to the provisions of R.S. 13:5304, the court may impose as a condition of probation that the defendant successfully complete the intensive incarceration program established pursuant to R.S. 15:574.4.1. If the defendant is not accepted into the intensive incarceration program or fails to successfully complete the intensive incarceration program, the court shall reconsider the sentence imposed as provided in Article 881.1.*
- (3) *In felony cases, an additional condition of the probation may be that the defendant be ordered to be committed to the custody of the Department of Public Safety and Corrections and be required to serve a sentence of not more than six months without diminution of sentence in the intensive incarceration program pursuant to the provisions of R.S. 15:574.4.1. Upon successful completion of the program, the defendant shall return to supervised probation for a period of time as ordered by the court, subject to any additional conditions imposed by the court and under the same provisions of law under which the defendant was originally sentenced. If an offender is denied entry into the intensive incarceration program for physical or mental health reasons or for failure to meet the department's suitability criteria, the department shall notify the sentencing court, and the offender shall be resentenced in accordance with the provisions of Code of Criminal Procedure Article 881.1.*
- C. *In cases of violations of the Uniform Controlled Dangerous Substances Law, the court may order the suspension or restriction of the defendant's driving privileges, if any, for all or part of the period of probation. In such cases, a copy of the order shall be forwarded to the Department of Public Safety and Corrections, which shall suspend the defendant's driver's license or issue a restricted license in accordance with the orders of the court. Additionally, the court may order the defendant to:*
- (1) *Submit to and pay all costs for drug testing by an approved laboratory at the direction of his probation officer.*
- (2) *Perform not less than one hundred sixty hours nor more than nine hundred sixty hours of community service work.*

- D. *The court may, in lieu of the monthly supervision fee provided for in Paragraph A, require the defendant to perform a specified amount of community service work each month if the court finds the defendant is unable to pay the supervision fee provided for in Paragraph A.*
- E. *Before the court places a sexual offender on probation, it shall order the offender who has not previously been tested to submit to a blood and saliva test in accordance with R.S. 15:535. All costs shall be paid by the offender. Serial sexual offenders sentenced pursuant to R.S. 15:537(B) shall not be eligible for parole or probation.*
- F. *In cases of any violation of Subpart (A)(1) of Part V of Chapter 1 of Title 14 of the Louisiana Revised Statutes of 1950 or R.S. 14:92(7), the court may order the defendant to submit to psychological evaluation and, if indicated, order him to obtain psychiatric or psychological counseling for all or part of the period of probation. All costs shall be paid by the defendant.*
- G. *Before the court places the defendant on probation, it shall determine if the defendant has a high school degree or its equivalent and, if the defendant does not, it shall order the defendant to take a reading proficiency test. If the defendant scores below a sixth grade level on the reading proficiency test, the court shall condition probation upon the defendant's enrolling in and attending an adult education or reading program until he attains a sixth grade reading level or until his term of probation expires, whichever occurs first. All costs shall be paid by the defendant. If the court finds that there are no adult education or reading programs in the parish in which the defendant is domiciled, the defendant is unable to afford such a program, or attendance would create an undue hardship on the defendant, the court may suspend this condition of probation. The provisions of this Paragraph shall not apply to those defendants who are mentally, physically, or by reason of age, infirmity, dyslexia or other such learning disorders unable to participate.*
- H. (1) *In cases where the defendant has been convicted of or adjudication has been deferred or withheld for the perpetration or attempted perpetration of a sex offense as defined in R.S. 15:541, and probation is permitted by law and when the court places a defendant on probation, the court shall order the offender to register as a sex offender and to provide notification in accordance with the provisions of R.S. 15:540 et seq.*
- (2) *The defendant must state under oath where he will reside after sentencing and that he will advise the court of any subsequent change of address during the probationary period.*
- (3) *No offender who is the parent, stepparent, or has legal custody and physical custody of the child who is the victim shall be released on probation unless the victim has received psychological counseling prior to the offender's release if the offender is returning to the residence or community in which the child resides. Such psychological counseling shall include an attempt by the health care provider to ease the*

psychological impact upon the child of the notice required under Subparagraph (1) of this Paragraph, including assisting the child in coping with potential insensitive comments and actions by the child's neighbors and peers. The cost of such counseling shall be paid by the offender.

- (4) Repealed by Acts 2007, No. 460, §3, eff. Jan. 1, 2008.*
- (5) The court may order that the conditions of probation as provided for in Subparagraph (1) of this Paragraph shall apply for each subsequent change of address made by the defendant during the probationary period.*
- I. The defendant shall be given a certificate setting forth the conditions of his probation and shall be required to agree in writing to the conditions.*
- J. In cases where the defendant has been convicted of an offense involving criminal sexual activity, the court shall order as a condition of probation that the defendant successfully complete a sex offender treatment program. As part of the sex offender treatment program, the offender shall participate with a victim impact panel or program providing a forum for victims of criminal sexual activity and sex offenders to share experiences on the impact of the criminal sexual activity in their lives. The Department of Public Safety and Corrections shall establish guidelines to implement victim impact panels where, in the judgment of the licensed professional responsible for the sexual treatment program, appropriate victims are available, and shall establish guidelines for other programs where such victims are not available. All costs for the sex offender treatment program shall be paid by the offender.*
- K. A conviction for any offense involving criminal sexual activity as provided for in Paragraph H of this Article, includes a conviction for an equivalent offense under the laws of another state. Criminal sexual offenders under the supervision and legal authority of the Department of Public Safety and Corrections pursuant to the terms and conditions of the interstate compact agreement provided for in R.S. 15:574.14 shall be notified of the registration requirements provided for in this Article at the time the department accepts supervision and has legal authority of the individual.*
- L. (1) In all cases where the defendant has been convicted of an offense of domestic abuse as provided in R.S. 46:2132(3) to a family or household member as provided in R.S. 46:2132(4), or of an offense of dating violence as provided in R.S. 46:2151(C) to a dating partner as provided in R.S. 46:2151(B), the court shall order that the defendant submit to and successfully complete a court-approved course of counseling or therapy related to family or dating violence, for all or part of the period of probation. If the defendant has already completed such a counseling program, said counseling requirement shall be required only upon a finding by the court that such counseling or therapy would be effective in preventing future domestic abuse or dating violence.*

- (2) *All costs for the counseling or therapy shall be paid by the offender. In addition, the court may order that the defendant pay an amount not to exceed one thousand dollars to a family violence program located in the parish where the offense of domestic abuse occurred.*
- M. *If a defendant is injured or suffers other loss in the performance of community service work required as a condition of probation, neither the state nor any political subdivision, nor any officer, agent, or employee of the state or political subdivision shall be liable for any such injury or loss, unless the injury or loss was caused by the gross negligence or intentional acts of the officer, agent, or employee of the state or political subdivision. No provision of this Paragraph shall negate any requirement that an officer, agent, or employee secure proper and appropriate medical assistance for a defendant who is injured while performing community service work and in need of immediate medical attention.*

FEDERAL LAW AND ADVERTISING

There are several other federal laws that may be applicable to newspapers and advertising under certain circumstances, such as the Sherman Antitrust Act, 15 U.S.C. §1, *et seq.*, the Clayton Act, 15 U.S.C. §12, *et seq.*, and the Americans with Disabilities Act, 42 U.S.C. §12101, *et seq.*, etc. However, discussions of these laws are beyond the scope of this publication.

UNITED STATES CURRENCY

Federal law provides for restrictions on publishing illustrations of United States currency, as follows:

18 U.S.C. §504. Printing and filming of United States and foreign obligations and securities

Notwithstanding any other provision of this chapter, the following are permitted:

- (1) *The printing, publishing, or importation, or the making or importation of the necessary plates for such printing or publishing, of illustrations of -*
- (A) *postage stamps of the United States,*
 - (B) *revenue stamps of the United States,*
 - (C) *any other obligation or other security of the United States, and*
 - (D) *postage stamps, revenue stamps, notes, bonds, and any other obligation or other security of any foreign government, bank, or corporation. Illustrations permitted by the foregoing provisions of this section shall be made in accordance with the following conditions -*
 - (i) *all illustrations shall be in black and white, except that illustrations of postage stamps issued by the United States or by any foreign government and stamps issued under the Migratory Bird Hunting Stamp Act of 1934 may be in color;*

- (ii) *all illustrations (including illustrations of uncanceled postage stamps in color and illustrations of stamps issued under the Migratory Bird Hunting Stamp Act of 1934 in color) shall be of a size less than three-fourths or more than one and one-half, in linear dimension, of each part of any matter so illustrated which is covered by subparagraph (A), (B), (C), or (D) of this paragraph, except that black and white illustrations of postage and revenue stamps issued by the United States or by any foreign government and colored illustrations of canceled postage stamps issued by the United States may be in the exact linear dimension in which the stamps were issued; and*
- (iii) *the negatives and plates used in making the illustrations shall be destroyed after their final use in accordance with this section.*

The Secretary of the Treasury shall prescribe regulations to permit color illustrations of such currency of the United States as the Secretary determines may be appropriate for such purposes.

- (2) *The provisions of this section shall not permit the reproduction of illustrations of obligations or other securities, by or through electronic methods used for the acquisition, recording, retrieval, transmission, or reproduction of any obligation or other security, unless such use is authorized by the Secretary of the Treasury. The Secretary shall establish a system to ensure that the legitimate use of such electronic methods and retention of such reproductions by businesses, hobbyists, press or others shall not be unduly restricted.*
- (3) *The making or importation of motion-picture films, microfilms, or slides, for projection upon a screen or for use in telecasting, of postage and revenue stamps and other obligations and securities of the United States, and postage and revenue stamps, notes, bonds, and other obligations or securities of any foreign government, bank, or corporation. No prints or other reproductions shall be made from such films or slides, except for the purposes of paragraph (1), without the permission of the Secretary of the Treasury. For the purposes of this section the term "postage stamp" includes postage meter stamps.*

**TITLE 31 – MONEY AND FINANCE: TREASURY
CHAPTER IV – SECRET SERVICE,
DEPARTMENT OF THE TREASURY**

***PART 411--COLOR ILLUSTRATIONS OF UNITED STATES CURRENCY--
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Sec. 411.1 Color illustrations authorized.

- (a) *Notwithstanding any provision of chapter 25 of Title 18 of the U.S. Code, authority is hereby given for the printing, publishing or importation, or the making or importation of the necessary plates or items for such printing or publishing, of color illustrations of U.S. currency provided that:*

- (1) *The illustration be of a size less than three-fourths or more than one and one-half, in linear dimension, of each part of any matter so illustrated;*
 - (2) *The illustration be one-sided; and*
 - (3) *All negatives, plates, positives, digitized storage medium, graphic files, magnetic medium, optical storage devices, and any other thing used in the making of the illustration that contain an image of the illustration or any part thereof shall be destroyed and/or deleted or erased after their final use in accordance with this section.*
- (b) *[Reserved]*