



## New Regulations on Electronic Media Advertising

*by Karen A. Betzner, Senior Executive*

Pursuant to Business and Professions Code sections 6157-6159.2, special regulations apply to electronic media advertising by California lawyers and lawyer referral services, effective January 1, 1995. For these purposes, electronic media refers to television, radio and computer networks. The statutory scheme is noteworthy in that a civil action against the advertising attorney is available upon a State Bar determination that substantial evidence of a violation of the statute exists. This does not mean that the State Bar cannot or will not proceed with discipline. However, the focus of this regulation is on the civil action, with the State Bar acting as the first level of review.

Sections 6157.2, 6158, 6158.1 and 6158.3 contain the new restrictions. The message as a whole may not be false, deceptive, or misleading and must be capable of verification by a credible source. A rebuttable presumption affecting the burden of producing evidence that the message is false, deceptive, or misleading is created where an ad contains any of the following: a message about the ultimate result in a case without providing adequate information about the facts or law giving rise to the result; portrayals of events which may give rise to a claim for compensation; or reference to or implying money received by a client. One of two express disclaimers must be included in any ad that contains a message about the ultimate result in a case.

The complainant is required to simultaneously serve the complaint on both the State Bar and the attorney. The attorney has 7 days from service to provide the State Bar with a copy of the ad. If the attorney voluntarily withdraws the ad within 9 days of service of the complaint, no further action may be taken.

The State Bar has 21 days from receipt of the ad to determine whether substantial evidence of a violation of the statute exists. If the State Bar finds substantial evidence of a violation, the attorney has 72 hours to withdraw the ad and no further action may be taken. In addition, pursuant to section 6158.4(e), any person residing in California can commence a civil enforcement action within one year. The penalty is any amount up to \$5000 per broadcast of the ad, payable to the State Bar's Client Security Fund.

Regardless of the State Bar's finding, pursuant to section 6158.4(c) any person affected by it may commence a declaratory relief action in Superior Court to obtain a judicial determination of whether the ad violates the statute. Any defense may be raised for the first time in this action, including any constitutional challenges. The filing of the declaratory relief action stays any civil action brought pursuant to section 6158.4(e).

If the Superior Court finds a violation of the statute, the civil action may be filed if the ad is not withdrawn. The decision of the court in the declaratory relief action on whether a violation exists will be binding in the civil action if that binding effect is supported by collateral estoppel or res judicata. If the Superior Court finds no violation of the statute, no civil action may be filed if the finding is supported by collateral estoppel or res judicata.

While the State Bar's finding as to whether substantial evidence of a violation of the statute is admissible in the civil action, the State Bar cannot be a witness or a party to either the civil or declaratory relief actions. In fact, no direct action exists against the State Bar for its finding.

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Karen Betzner has been with the State bar of California since 1982. She is currently the Senior Executive for Professional Competence, Standards and Certification.

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