

2019 Regular Session

SENATE CONCURRENT RESOLUTION NO. 37

BY SENATOR LONG

ATTORNEYS. Requests the Louisiana Supreme Court and the Louisiana State Bar Association review rules governing solicitation advertising by attorneys.

1 A CONCURRENT RESOLUTION

2 To urge and request the Louisiana Supreme Court and the Louisiana State Bar Association
3 to study solicitation advertising by attorneys, and the potential need for revisions and
4 updates to the state Rules of Professional Conduct.

5 WHEREAS, Article V, Section 5(B) of the Constitution of Louisiana provides that
6 the Louisiana Supreme Court has exclusive original jurisdiction of disciplinary proceedings
7 against a member of the bar; and

8 WHEREAS, in 2009, the Louisiana Supreme Court adopted amendments to the
9 Louisiana Rules of Professional Conduct, and the Louisiana State Bar Association created
10 the Handbook on Lawyer Advertising and Solicitation, after months of study and hearings
11 conducted in response to legislation and other calls for standards and guidance regarding
12 attorney advertising; and

13 WHEREAS, subsequent challenges to the constitutionality of Rules of Professional
14 Conduct regulating attorney advertising were filed in federal district court, and ultimately
15 resulted in the federal Fifth Circuit Court of Appeals decision in *Public Citizen, Inc. v.*
16 *Louisiana Attorney Disciplinary Board*, 632 F. 3d 212 (2011); and

17 WHEREAS, in the *Public Citizen* case, the Court struck down certain state rule
18 requirements as infringing upon First Amendment protections regarding commercial speech,

1 but upheld other rule requirements as the legitimate exercise by the state of its substantial
2 interests in protecting the public from unethical and false, deceptive, and misleading lawyer
3 advertising, and also in preserving the ethical integrity of the legal profession; and

4 WHEREAS, in the *Public Citizens* case, the Court reaffirmed that commercial free
5 speech in the form of attorney advertising is not absolute, but instead merits a limited
6 measure of protection subject to differing levels; and

7 WHEREAS, in the *Public Citizens* case, the Court reaffirmed that the state does have
8 substantial interests in regulating attorney advertising to prevent unlawful activity and the
9 deception and confusion of consumers, including claims and depictions of scenes and
10 pictures in attorney advertising inherently likely to deceive the public; and

11 WHEREAS, in the *Public Citizens* case, the Court pointed out that the United States
12 Supreme Court has recognized the government's substantial interests in "ensuring the
13 accuracy of commercial information in the marketplace" and "maintaining standard of
14 ethical conduct in the licensed professions", and has further recognized that a state's interest
15 in regulating attorneys is especially great since lawyers are essential to the primary
16 governmental function of administering justice, and have historically been "officers of the
17 courts"; and

18 WHEREAS, in light of these substantial interests, the Louisiana Supreme Court and
19 the Louisiana State Bar Association should undertake a review of the present practices and
20 forms of attorney solicitation advertising in this state for the purposes of determining
21 whether revisions and updates are needed to the current Louisiana Rules of Professional
22 Conduct, and should further implement such changes in the rules as necessary to protect the
23 public and preserve the ethical integrity of the legal profession.

24 THEREFORE, BE IT RESOLVED that the Legislature of Louisiana does hereby
25 urge and request the Louisiana Supreme Court and the Louisiana State Bar Association to
26 study solicitation advertising by attorneys, and the potential need for revisions and updates
27 to the state Rules of Professional Conduct.

28 BE IT FURTHER RESOLVED that copies of this Resolution be transmitted to the
29 Louisiana Supreme Court and the Louisiana State Bar Association.

The original instrument and the following digest, which constitutes no part of the legislative instrument, were prepared by Xavier I. Alexander.

SCR 37 Original	DIGEST 2019 Regular Session	Long
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Requests the La. Supreme Court and the Louisiana State Bar Association review and reevaluate the rules governing advertising by attorneys in the state of Louisiana.