

**Rule 7.1 [1-400] Communications Concerning A Lawyer's Services  
(Commission's Proposed Rule Adopted on October 21–22, 2016 – Clean Version)**

- (a) A lawyer shall not make a false or misleading communication about the lawyer or the lawyer's services. A communication is false or misleading if it contains a material misrepresentation of fact or law, or omits a fact necessary to make the communication considered as a whole not materially misleading.
- (b) The Board of Trustees of the State Bar may formulate and adopt standards as to communications that will be presumed to violate Rule 7.1, 7.2, 7.3, 7.4 or 7.5. The standards shall only be used as presumptions affecting the burden of proof in disciplinary proceedings involving alleged violations of these Rules. "Presumption affecting the burden of proof" means that presumption defined in Evidence Code §§ 605 and 606. Such standards formulated and adopted by the Board, as from time to time amended, shall be effective and binding on all lawyers.

**Comment**

[1] This Rule governs all communications of any type whatsoever about the lawyer or the lawyer's services, including advertising permitted by Rule 7.2. A communication includes any message or offer made by or on behalf of a lawyer concerning the availability for professional employment of a lawyer or a lawyer's law firm\* directed to any person.\*

[2] A communication that contains an express guarantee or warranty of the result of a particular representation is a false or misleading communication under this Rule. See also, Business and Professions Code § 6157.2(a).

[3] This Rule prohibits truthful statements that are misleading. A truthful statement is misleading if it omits a fact necessary to make the lawyer's communication considered as a whole not materially misleading. A truthful statement is also misleading if it is presented in a manner that creates a substantial\* likelihood that it will lead a reasonable\* person\* to formulate a specific conclusion about the lawyer or the lawyer's services for which there is no reasonable\* factual foundation. Any communication that states or implies "no fee without recovery" is also misleading unless the communication also expressly discloses whether or not the client will be liable for costs.

[4] A communication that truthfully reports a lawyer's achievements on behalf of clients or former clients, or a testimonial about or endorsement of the lawyer, may be misleading if presented so as to lead a reasonable\* person\* to form an unjustified expectation that the same results could be obtained for other clients in similar matters without reference to the specific factual and legal circumstances of each client's case. Similarly, an unsubstantiated comparison of the lawyer's services or fees with the services or fees of other lawyers may be misleading if presented with such specificity as would lead a reasonable\* person\* to conclude that the comparison can be

substantiated. An appropriate disclaimer or qualifying language often avoids creating unjustified expectations.

[5] This Rule prohibits a lawyer from making a communication that states or implies that the lawyer is able to provide legal services in a language other than English unless the lawyer can actually provide legal services in that language or the communication also states in the language of the communication the employment title of the person\* who speaks such language.

[6] Rules 7.1 through 7.5 are not the sole basis for regulating communications concerning a lawyer's services. See, e.g., Business and Professions Code §§ 6150 – 6159.2 and 17000 et. seq. Other state or federal laws may also apply.

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**Synopsis of Public Comments**

**TOTAL = 1**      **A = 0**  
**D = 1**  
**M = 0**  
**NI = 0**

No.	Commenter/Signatory	Comment on Behalf of Group?	A/D/M/NI <sup>1</sup>	Rule Section or Cmt.	Comment	RRC Response
Y-2016-21ac	State Bar Office of Chief Trial Counsel (OCTC) (Dresser) (01-09-17)	Y	D		<p>1. OCTC believes the current rule is working fine and disagrees with separate rules for communications, advertising, and solicitation. A unitary rule is clearer and more enforceable.</p> <p>2. OCTC believes there is no reason to eliminate presumptions.</p>	<p>1. The Commission does not agree that the current rule works well. The Commission continues to believe that the current rule has proven to be outdated and unworkable particularly in regard to the Internet and other modern client development tools. In addition, the Commission continues to believe it is crucial, in light of multijurisdictional practice of law and the Internet, that California move with other jurisdictions toward a national standard for the rules governing advertising and solicitation. Adopting the national approach will afford great public protection.</p> <p>2. The Commission continues to take the position that the standards are not necessary to regulate inherently false and deceptive advertising. As presently framed, the presumptions force lawyers to prove a negative. They create a lack of predictability with respect to how a particular bar regulator will view a given</p>

<sup>1</sup> A = AGREE with proposed Rule      D = DISAGREE with proposed Rule      M = AGREE ONLY IF MODIFIED      NI = NOT INDICATED

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						<p>advertisement. The standards also create a risk of inconsistent enforcement and an unchecked opportunity to regulate "taste" in the name of "misleading" advertisements. In the absence of deception or illegal activities, regulations concerning the content of advertisements are constitutionally permitted only if they are narrowly drawn to advance a substantial governmental interest. <i>Cent. Hudson Gas &amp; Elec. v. Pub. Serv. Comm'n</i>, 447 U.S. 557 (1980); <i>Alexander v. Cahill</i>, 598 F.3d. 79 (2d Cir. 2010) (state's ban on "advertising techniques" that are no more than potentially misleading are unconstitutionally broad). In any event, the content of the standards have largely been carried forward as blackletter provisions or comments.</p> <p>In sum, the presumptions are also outdated and serve more as barriers to delivering useful information to consumers rather than as presumptions affecting the burden of proof in disciplinary cases, which is their intended purpose. As drafted, proposed Rule 7.1 is</p>

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						<p>an enforceable standard that will achieve greater public protection and uniformity in regulation while allowing consumers to receive needed information concerning the availability of legal services.</p> <p>Nevertheless, the Commission believes it essential that the Board's authority to promulgate standards be maintained in the event new technology or changes in the delivery of legal services warrant a new standard. Consequently, Rule 7.1(b) has been retained in the rule.</p>

