



# The State Bar of California

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CLOSING

II.E. Advertising  
08-11-21 CTJG Meeting  
Open Session

WORKING GROUP

**DATE:** August 4, 2021

**TO:** Closing the Justice Gap Working Group

**FROM:** State Bar Staff

**SUBJECT:** II.E. Preliminary Report from the Lawyer Advertising and Solicitation Rules Team

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For Closing the Justice Gap Working Group August 11, 2021 meeting agenda item II.E. – Preliminary Report from the Lawyer Advertising and Solicitation Rules Team, the following materials and background resources are provided for your review and preparation:

- August 4, 2021 Memo from Judge Wendy Chang and Toby Rothschild with background on the advertising rules;
- Article entitled “[Another Self-Inflicted Barrier to Access to Justice: The Rules Governing Lawyer Marketing and Advertising](#),” The Chicago Bar Foundation, May 25, 2017; and
- [May 26, 2021 memo from Merri Baldwin and Andrew Tuft](#) to the CTJG members providing background on the Advertising Rules assignment (starting at page 22).



**DATE:** August 4, 2021

**TO:** Closing the Justice Gap Working Group

**FROM:** Judge Wendy Chang and Toby Rothschild

**SUBJECT:** Advertising Rules

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The leadership of Closing the Justice Gap Working Group tasked us with reviewing the advertising and solicitation rules (California Rules of Professional Conduct rules 7.1 – 7.5) to see if there are changes that should be recommended to these rules to bring them up to date and to address access to justice issues. The Access Through Innovation of Legal Services Task Force (ATILS) recommended that the rules be reviewed based on the current American Bar Association (ABA) Model Rules and on the recommendations of The Association of Professional Responsibility Lawyers (APRL), as well as changes in other jurisdictions.

Rules 7.1-7.5 were revised in California as part of the 2018 revision of the California Rules of Professional Conduct. While those rules were under consideration, the ABA was reconsidering its equivalent rules. The ABA changed its rules, but it was done just slightly too late to be considered in California.

The ABA review was based in part on two reports from APRL, a national association of lawyers who provide advice and representation in all aspects of legal ethics and professional responsibility. APRL's proposal called for a substantial rewrite of the advertising and solicitation rules. The purpose of this memo is to highlight the basic framework of the ABA and APRL proposals and get a sense of the Working Group on which proposals they prefer us to proceed with. The short form of the difference is that the APRL proposals go farther than the ABA rules ultimately did.

## APRL

The basic thrust of the APRL draft of the rules is to limit the regulation of advertising to the prevention of false or misleading communications. The proposal rewrites rule 7.1 to read: "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 omit a fact necessary to make the statement considered as a whole not materially misleading." The proposal would eliminate rules 7.2, 7.4, and 7.5. The comments for rules 7.1, 7.2, 7.4, and 7.5 would then be combined into rule 7.1.

APRL's proposal to amend rule 7.3, regarding solicitation, would limit the prohibition to face-to-face and direct telephone communication, removing "real-time electronic communication."

## ABA

There were a two main thrusts of the revised Model Rules on Advertising. First, the Model Rules sought to streamline and encourage national uniformity, in light of the growth of multidisciplinary practices in the modern legal model. Thus, what were 5 rules were collapsed into 3 rules. Second, the rules sought to modernize, simplify, and to be more adaptable to changes in technology as it pertains to language used (i.e. California's "written, recorded or electronic means of communication, including public media" is simply "any media" in the Model Rule 7.2(a)). Overall, however, the changes were modest, clarifying and updating, as opposed to major steps in reform. Rule 7.2 ("Communications Concerning a Lawyer's Services – Specific Rules"), 7.4 ("Communication of Fields of Specialty & Specialization" - conceptually moved to new rule 7.3(c)), and 7.5 ("Firm Names and Letterheads" – conceptually moved to comment 5 in Rule 7.1) all remain in the current Model Rules in some form.

Finally Rule 7.3's scope regarding solicitation is only as to live person-to-person contact (as well as defining solicitation). California, on the other hand, prohibits, "in-person, live telephone or real-time electronic contact"). On this, the ABA went further than the APRL proposal.