



# The State Bar of California

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II.C. Lawyer Advertising  
Rule Amendments  
09-17-21 CTJG Meeting  
Open Session

**DATE:** September 10, 2021

**TO:** Closing the Justice Gap Working Group (CTJG)

**FROM:** Wendy Chang and Toby Rothschild

**SUBJECT:** Lawyer Advertising and Solicitation Rules

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This memorandum sets forth a report, as requested by the Chair at the April 9, 2021 CTJG meeting, that addresses the following four questions:

- (1) Scope of assignment: What has the CTJG been asked to advise on
- (2) What is the status quo (current rules and/or statutes and how they operate)?
- (3) What are possible options for change, and what are the recognized advantages/disadvantages
- (4) What steps should we take (request presentations, conduct interviews, review studies, etc.) to reach a fully informed recommendation?

Working Group members are asked to:

1. Review the background memo and any provided resources;
2. Be prepared to ask any questions about this rule revision task; and
3. Consider submitting input on item #3 above – What are the possible options for change and what are the advantages and disadvantages of such change?

## SCOPE OF THE ASSIGNMENT: WHAT HAS THE CTJG BEEN ASKED TO ADVISE ON?

This assignment originates from the Task Force on Access Through Innovation of Legal Services ([ATILS](#)) [Final Report and Recommendations](#). ATILS Recommendation No. 7 stated:

Consider Recommendations for Amendments to the Rules of Professional Conduct on Advertising and Solicitation Informed by the Current American Bar Association Model Rules, the Proposed Advertising and Solicitation Rules Developed by the Association of Professional Responsibility Lawyers, and Recent Amendments to the Advertising Rules in Other Jurisdictions. In Particular a Reconsideration of the Existing Designation of “Real-Time Electronic Contact” as Prohibited Solicitation

In establishing the CTJG, the State Bar Board of Trustees approved a [charter](#) which states, in part: “The working group will develop specific recommendations regarding the following . . . California’s lawyer advertising and solicitation rules. In developing recommendations on this subject, the working group will evaluate California’s and the American Bar Association’s lawyer advertising and solicitation rules to determine whether and to what extent these rules inhibit or advance innovation and access to legal services.”

## **WHAT IS THE STATUS QUO (CURRENT RULES AND/OR STATUTES AND HOW THEY OPERATE)?**

Currently in California, attorney advertising and solicitation is regulated for purposes of attorney discipline under five separate rules of professional conduct that are intended to regulate the commercial speech of lawyers.

- [Rule 7.1 \(Communications Concerning a Lawyer’s Services\)](#) sets out the general prohibition against a lawyer making false and misleading communications concerning the availability of legal services.
- [Rule 7.2 \(Advertising\)](#) specifically addresses advertising, a subset of communication.
- [Rule 7.3 \(Solicitation of Clients\)](#) regulates the marketing of legal services through direct contact with a potential client either by real-time communication such as delivered in-person, by telephone, “real-time electronic contact,” or by directly targeting a person known to be in need of specific legal services.
- [Rule 7.4 \(Communication of Fields of Practice and Specialization\)](#) regulates the communication of a lawyer's fields of practice and claims to specialization.
- [Rule 7.5 \(Firm Names and Trade Names\)](#) regulates the use of firm names and trade names.

Other California law exists related to attorney advertising, some of which includes:

- Laws that apply generally to advertising and fair business practices also govern lawyer advertising (see Business and Professions Code §§ 17529-17529.9, 17538.41, 17538.43, 17538.45).
- Article 9.5 of the State Bar Act (entitled: “Legal Advertising”) sets forth extensive statutory regulation of lawyer advertising, including provisions that expressly apply to electronic media advertisements. Also included in the statutory scheme is a special enforcement mechanism that affords the alleged violator a nine-day opportunity to withdraw an advertisement.
- Rules 9.47(b)(3) and 9.48(b)(3) of the California Rules of Court include provisions that impose website requirements on out-of-state lawyers practicing in California under multi-jurisdictional practice of law (MJP) standards.
- The State Bar Act prohibits “running and capping” in Business and Professions Code §§ 6150 through 6154.
- State Bar Act provisions regulating a lawyer referral service in California are not to be construed as prohibiting attorneys from “jointly advertising their services.” (Bus. & Prof. Code § 6155(h).)

- The Labor Code includes special provisions governing advertisements for workers' compensation claims (see Labor Code §§ 139.45, and 5432 through 5434).
- Business and Professions Code § 6132 requires the removal from all law firm advertisements, letterhead, signs, and other materials of the name of an attorney who is disbarred, or who resigned with charges pending within 60 days of the disbarment or resignation.

## WHAT ARE THE POSSIBLE OPTIONS FOR CHANGE, AND WHAT ARE THE RECOGNIZED ADVANTAGES AND DISADVANTAGES?

On June 22, 2015, the Association of Professional Responsibility Lawyers Regulation of Lawyer Advertising Committee (APRL) issued a report identifying concerns regarding overly restrictive and inconsistent state regulation of lawyer advertising, particularly related to electronic media advertising. In this report, APRL recommended revisions to the rules of professional conduct concerning lawyer advertising in order to “achieve greater rationality and uniformity in regulatory enforcement of lawyer advertising and marketing and propped a new Model Rule 7.1 to replace ABA Model Rules 7.1, 7.1, 7.4, and 7.5 and by the use of non-disciplinary means to address most complaints about lawyer advertising.”<sup>1</sup> The 2015 report further stated: “It is long past time for rationality and uniformity to be brought to the regulation of lawyer advertising. The Committee recommends that the ABA Model Rules governing communications about legal services be consolidated into a single disciplinary rule that simply prohibits false or misleading statements. Adopting this approach to advertising regulation, combined with reasonable uniform enforcement policies and protocols by state disciplinary authorities, is in the Committee’s view the best way to ensure honest communication by lawyers while at the same time promoting the widest possible access by the public to legal services.”<sup>2, 3</sup>

On April 26, 2016, issued a supplemental report wherein they recommended revision to ABA Model Rule 7.3 regarding direct solicitation. The Committee concluded that “the legitimate regulatory objectives of preventing overreaching and coercion by lawyers who use in-person solicitation and targeted communications with the primary motivation of pecuniary gain can best be achieved by combining provisions of Models Rules 7.2 and 7.3 in a single rule . . . . The Committee’s revised rule both defines solicitation and distinguishes solicitations that are prohibited from those that are permitted with appropriate protections.”

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<sup>1</sup> Association of Professional Responsibility Lawyers, Regulation of Lawyer Advertising Committee, [Supplemental Report April, 26, 2016](#).

<sup>2</sup> Association of Professional Responsibility Lawyers, [2015 Report of the Regulation of Lawyer Advertising Committee](#).

<sup>3</sup> Each of the California Rules of Professional Conduct in the 7-series, except for rule 7.3, refer back to necessitating compliance with rule 7.1’s prohibition on making a false or misleading communication about the lawyer or the lawyer’s services. This fact lends credence to the APRL’s conclusion that a “practical solution” to the concern of overly restrictive and inconsistent lawyer advertising rules is “having a single rule that prohibits false and misleading communications about a lawyer or the lawyer’s services.”

On August 6, 2018, the ABA House of Delegates approved changes to the ABA Model Rules governing attorney advertising. These changes were made following study of the APRL reports. In brief, the some of the more notable changes made to the ABA Model Rules concerning advertising include: (1) condensing rules 7.1 through 7.5 into three rules, 7.1 through 7.3; (2) defining “solicitation” in the rules where it was previously undefined;<sup>4</sup> (3) an exception has been added to the former rule against live person-to-person solicitations specifically for experienced users of legal services, such as corporations; (4) simplifying rule 7.2(a) to simply state “A lawyer may communicate information regarding the lawyer’s services through any media”; (4) solicitations of services are no longer required to be explicitly labeled as “advertising material”; (5) the prohibition concerning “real-time electronic contact” was deleted from rule 7.3(a) and new comments were added to that rule providing examples permissible and impermissible live person-to-person contact; and, (6) the address of an attorney or law firm is not required in an advertisement.

Based on our initial research, the current state of regulation for attorney advertising breaks into three categories. There are some jurisdictions that have minimal restrictions, several of which have gone further than the APRL’s recommendations. These jurisdictions include Arizona, District of Columbia, Utah, Virginia, and Washington. For example, Virginia and Arizona retained rule 7.1 while deleting rules 7.2, 7.4, and 7.5 and consolidated them into a new rule 7.3. The District of Columbia consolidated rules 7.2, 7.3, and 7.4 into rule 7.1 and retained rule 7.5.

Most jurisdictions have lawyer advertising rules that are based on the pre-2018 ABA Model Rules.<sup>5</sup> The rest of the jurisdictions have rules that vary substantially from the ABA Model Rules and are usually more restrictive, even though they often follow the ABA format. These jurisdictions include [Connecticut](#), [Florida](#), Louisiana, [Nevada](#), [New Jersey](#), [New York](#),<sup>6</sup> and [Texas](#).

The reason to modernize California’s advertising and solicitation rules is well articulated in the September 28, 2020 [Chicago Bar Association/Chicago Bar Foundation Task Force on the Sustainable Practice of Law & Innovation Report](#):

The backdrop for these proposals is studies regularly showing that many, if not most, people in our community today do not know how to connect to reliable legal information or find a good lawyer whose skillset matches their needs – and that is when they know they have a legal problem. As a recent [American Bar Foundation](#)

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<sup>4</sup> California defines “solicitation” and “solicit” in its rule 7.3(e) as “an oral or written targeted communication initiated by or on behalf of the lawyer that is directed to a specific person and that offers to provide, or can reasonably be understood as offering to provide, legal services.” The revised ABA Model Rule is more focused. ABA Model Rule 7.3(a) states “‘Solicitation’ or ‘solicit’ denotes a communication initiated by or on behalf of a lawyer or law firm that is directed to a specific person the lawyer knows or reasonably should know needs legal services in a particular matter and that offers to provide, or reasonably can be understood as offering to provide, legal services for that matter.”

<sup>5</sup> We are informed of at least four jurisdictions that have requests pending to amend their lawyer advertising rules: Alabama, Pennsylvania, South Carolina, and Tennessee.

<sup>6</sup> Note: The New York Committee on Standards of Attorney Conduct (COSAC) is currently in the process of a comprehensive review of the Rules of Professional Conduct. See, <https://nysba.org/app/uploads/2020/03/9-Agenda-Item-8-COSAC-report-and-recommendations.pdf>.

[study](#) by the now nationally acclaimed Rebecca Sandefur found, most people do not even recognize when they have a legal problem or a potential legal solution.

The ability for lawyers to advertise to raise awareness and stimulate the market is a crucial part of helping people recognize they have legal problems with potential legal solutions. Where appropriate, it is also important that lawyers have the ability to solicit clients who are known to be in need of legal services in order to connect to potential clients who may not otherwise know where to turn. So long as these actions are done truthfully and without coercion or harassment, lawyers should be permitted to engage in these activities that are widely accepted in other professions and industries, as well as consistent with commercial speech protection under the First Amendment.

This subcommittee recommends that we use the ABA Model Rules as our starting point, but review post-Amendment changes to advertising and solicitation rules from other Model Rule jurisdictions to determine if those approaches might improve our recommendations.

#### STAFF RECOMMENDATIONS ON RULE REVISION ISSUES IDENTIFIED BY ATILS

On page 46 of the ATILS Final Report, ATILS outlined specific issues that could be studied. This table reflects State Bar staff's recommendation on each of these issues.

ATILS Rule Revision Issue	Staff Position	Pros In Favor of this Revision	Cons Against This Revision
Whether provisions on false and misleading communications should be combined into rule 7.1 and its comments, including rule 7.5 [Firm Names and Trade Names] which largely relates to misleading communications.	Yes	Consolidates communications prohibitions and streamlines the black letter of the rule and this may simplify compliance for advertisers and allow for enhanced information to consumers about availability of legal services	<ul style="list-style-type: none"> <li>• Lack of national uniformity is a significant risk management issue especially for online advertising and this revision has not been adopted by a majority of jurisdictions</li> <li>• Comments cannot be used as a basis for discipline</li> </ul>
Whether specific rules on lawyer advertising should be consolidated into rule 7.2.	Yes – but consideration for placing rule 7.5(b) in the black letter of rule 7.1 should be given, similar to the placement of 7.4(a) in ABA MR 7.2	Consolidates advertising prohibitions and streamlines the black letter of the rule and this may simplify compliance for advertisers and allow for enhanced information to consumers about availability of legal services	<ul style="list-style-type: none"> <li>• Lack of national uniformity is a significant risk management issue especially for online advertising and this revision has not been adopted by a majority of jurisdictions</li> <li>• Comments cannot be used as a basis for discipline</li> </ul>
Whether in rule 7.2(c), “office address” should be	Yes	<ul style="list-style-type: none"> <li>• Removes a possible disincentive for online</li> </ul>	Typically, an “office address” is used for service

ATILS Rule Revision Issue	Staff Position	Pros In Favor of this Revision	Cons Against This Revision
changed to “contact information” to address technological advances that influence how lawyers may be contacted and how advertising is presented.		<p>providers to advertise</p> <ul style="list-style-type: none"> <li>• CPPWG is making this change in adapting the rule for the proposed paraprofessional RPCs so there would be consistency among the paraprofessional and attorney rule</li> </ul>	of process, courts, and other official notices (but see Code of Civil Procedure section 1010.6 documents to be electronically served)
Whether the ban on direct solicitation in rule 7.3 should apply solely to live person-to-person contact, including in person, face-to-face, telephone, and real-time electronic or other communications such as Skype. It is recommended that the rule be changed to no longer prohibit solicitations such as chat rooms, text messages, or any other written communications to which recipients would not feel undue pressure to respond.	Yes	<p>Innovative delivery systems such as online providers of legal services might rely on electronic advertising and this revision may remove a barrier that allows for such providers to use marketing methods that are calculated to reach consumers who might be predisposed to receiving services from an online provider (e.g., consumers who use social media)</p> <p>This is a change that appears to be uniformly adopted by those jurisdictions that have recently amended their advertising and solicitation rules, this would help increase national uniformity.</p>	The distinction between live telephone and certain real-time electronic communications might be unclear and some methods may pose the same risks of overreaching as live telephone communications

## WHAT STEPS SHOULD WE TAKE (REQUEST PRESENTATIONS CONDUCT INTERVIEWS, REVIEW STUDIES, ETC.) TO REACH A FULLY INFORMED RECOMMENDATION?

The drafting team believes we can present revised advertising rules at the next CTJG meeting, based on our recommendations above. However, if there is not a majority view amongst the CTJG for pursuing the recommended modified ABA model rule approach, we could request a presentation from a nationally recognized expert on lawyer advertising regulation. Two possibilities include [Jan Jacobowitz](#) or [Will Hornsby](#).

## **ABA MODEL RULES OF PROFESSIONAL CONDUCT 7.1-7.5**

### **RULE 7.1 COMMUNICATIONS CONCERNING A LAWYER'S SERVICES**

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 statement considered as a whole not materially misleading.

#### **Comment**

[1] This Rule governs all communications about a lawyer's services, including advertising. Whatever means are used to make known a lawyer's services, statements about them must be truthful.

[2] Misleading truthful statements are prohibited by this Rule. 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 misleading if a substantial likelihood exists 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. A truthful statement is also misleading if presented in a way that creates a substantial likelihood that a reasonable person would believe the lawyer's communication requires that person to take further action when, in fact, no action is required.

[3] A communication that truthfully reports a lawyer's achievements on behalf of clients or former clients 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 claim about a lawyer's or law firm's services or fees, or an unsubstantiated comparison of the lawyer's or law firm's services or fees with those of other lawyers or law firms, may be misleading if presented with such specificity as would lead a reasonable person to conclude that the comparison or claim can be substantiated. The inclusion of an appropriate disclaimer or qualifying language may preclude a finding that a statement is likely to create unjustified expectations or otherwise mislead the public.

[4] It is professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit or misrepresentation. Rule 8.4(c). See also Rule 8.4(e) for the prohibition against stating or implying an ability to improperly influence a government agency or official or to achieve results by means that violate the Rules of Professional Conduct or other law.

[5] Firm names, letterhead and professional designations are communications concerning a lawyer's services. A firm may be designated by the names of all or some of its current members, by the names of deceased members where there has been a succession in the firm's identity or by a trade name if it is not false or misleading. A lawyer or law firm also may be designated by a distinctive website address, social media username or comparable professional designation



that is not misleading. A law firm name or designation is misleading if it implies a connection with a government agency, with a deceased lawyer who was not a former member of the firm, with a lawyer not associated with the firm or a predecessor firm, with a nonlawyer or with a public or charitable legal services organization. If a firm uses a trade name that includes a geographical name such as “Springfield Legal Clinic,” an express statement explaining that it is not a public legal aid organization may be required to avoid a misleading implication.

[6] A law firm with offices in more than one jurisdiction may use the same name or other professional designation in each jurisdiction.

[7] Lawyers may not imply or hold themselves out as practicing together in one firm when they are not a firm, as defined in Rule 1.0(c), because to do so would be false and misleading.

[8] It is misleading to use the name of a lawyer holding a public office in the name of a law firm, or in communications on the law firm’s behalf, during any substantial period in which the lawyer is not actively and regularly practicing with the firm.

## **RULE 7.2 COMMUNICATIONS CONCERNING A LAWYER’S SERVICES: SPECIFIC RULES**

(a) A lawyer may communicate information regarding the lawyer’s services through any media.

(b) A lawyer shall not compensate, give or promise anything of value to a person for recommending the lawyer’s services except that a lawyer may:

(1) pay the reasonable costs of advertisements or communications permitted by this Rule;

(2) pay the usual charges of a legal service plan or a not-for-profit or qualified lawyer referral service;

(3) pay for a law practice in accordance with Rule 1.17;

(4) refer clients to another lawyer or a nonlawyer professional pursuant to an agreement not otherwise prohibited under these Rules that provides for the other person to refer clients or customers to the lawyer, if:

(i) the reciprocal referral agreement is not exclusive; and

(ii) the client is informed of the existence and nature of the agreement; and

(5) give nominal gifts as an expression of appreciation that are neither intended nor reasonably expected to be a form of compensation for recommending a lawyer’s services.

(c) A lawyer shall not state or imply that a lawyer is certified as a specialist in a particular field of law, unless:



- (1) the lawyer has been certified as a specialist by an organization that has been approved by an appropriate authority of the state or the District of Columbia or a U.S. Territory or that has been accredited by the American Bar Association; and
  - (2) the name of the certifying organization is clearly identified in the communication.
- (d) Any communication made under this Rule must include the name and contact information of at least one lawyer or law firm responsible for its content.

## Comments

[1] This Rule permits public dissemination of information concerning a lawyer's or law firm's name, address, email address, website, and telephone number; the kinds of services the lawyer will undertake; the basis on which the lawyer's fees are determined, including prices for specific services and payment and credit arrangements; a lawyer's foreign language ability; names of references and, with their consent, names of clients regularly represented; and other information that might invite the attention of those seeking legal assistance.

## Paying Others to Recommend a Lawyer

[2] Except as permitted under paragraphs (b)(1)-(b)(5), lawyers are not permitted to pay others for recommending the lawyer's services. A communication contains a recommendation if it endorses or vouches for a lawyer's credentials, abilities, competence, character, or other professional qualities. Directory listings and group advertisements that list lawyers by practice area, without more, do not constitute impermissible "recommendations."

[3] Paragraph (b)(1) allows a lawyer to pay for advertising and communications permitted by this Rule, including the costs of print directory listings, on-line directory listings, newspaper ads, television and radio airtime, domain-name registrations, sponsorship fees, Internet-based advertisements, and group advertising. A lawyer may compensate employees, agents and vendors who are engaged to provide marketing or client development services, such as publicists, public-relations personnel, business-development staff, television and radio station employees or spokespersons and website designers.

[4] Paragraph (b)(5) permits lawyers to give nominal gifts as an expression of appreciation to a person for recommending the lawyer's services or referring a prospective client. The gift may not be more than a token item as might be given for holidays, or other ordinary social hospitality. A gift is prohibited if offered or given in consideration of any promise, agreement or understanding that such a gift would be forthcoming or that referrals would be made or encouraged in the future.

[5] A lawyer may pay others for generating client leads, such as Internet-based client leads, as long as the lead generator does not recommend the lawyer, any payment to the lead generator is consistent with Rules 1.5(e) (division of fees) and 5.4 (professional independence of the lawyer), and the lead generator's communications are consistent with Rule 7.1

(communications concerning a lawyer's services). To comply with Rule 7.1, a lawyer must not pay a lead generator that states, implies, or creates a reasonable impression that it is recommending the lawyer, is making the referral without payment from the lawyer, or has analyzed a person's legal problems when determining which lawyer should receive the referral. See Comment [2] (definition of "recommendation"). See also Rule 5.3 (duties of lawyers and law firms with respect to the conduct of nonlawyers); Rule 8.4(a) (duty to avoid violating the Rules through the acts of another).

[6] A lawyer may pay the usual charges of a legal service plan or a not-for-profit or qualified lawyer referral service. A legal service plan is a prepaid or group legal service plan or a similar delivery system that assists people who seek to secure legal representation. A lawyer referral service, on the other hand, is any organization that holds itself out to the public as a lawyer referral service. Qualified referral services are consumer-oriented organizations that provide unbiased referrals to lawyers with appropriate experience in the subject matter of the representation and afford other client protections, such as complaint procedures or malpractice insurance requirements. Consequently, this Rule only permits a lawyer to pay the usual charges of a not-for-profit or qualified lawyer referral service. A qualified lawyer referral service is one that is approved by an appropriate regulatory authority as affording adequate protections for the public. See, e.g., the American Bar Association's Model Supreme Court Rules Governing Lawyer Referral Services and Model Lawyer Referral and Information Service Quality Assurance Act.

[7] A lawyer who accepts assignments or referrals from a legal service plan or referrals from a lawyer referral service must act reasonably to assure that the activities of the plan or service are compatible with the lawyer's professional obligations. Legal service plans and lawyer referral services may communicate with the public, but such communication must be in conformity with these Rules. Thus, advertising must not be false or misleading, as would be the case if the communications of a group advertising program or a group legal services plan would mislead the public to think that it was a lawyer referral service sponsored by a state agency or bar association.

[8] A lawyer also may agree to refer clients to another lawyer or a nonlawyer professional, in return for the undertaking of that person to refer clients or customers to the lawyer. Such reciprocal referral arrangements must not interfere with the lawyer's professional judgment as to making referrals or as to providing substantive legal services. See Rules 2.1 and 5.4(c). Except as provided in Rule 1.5(e), a lawyer who receives referrals from a lawyer or nonlawyer professional must not pay anything solely for the referral, but the lawyer does not violate paragraph (b) of this Rule by agreeing to refer clients to the other lawyer or nonlawyer professional, so long as the reciprocal referral agreement is not exclusive and the client is informed of the referral agreement. Conflicts of interest created by such arrangements are governed by Rule 1.7. Reciprocal referral agreements should not be of indefinite duration and should be reviewed periodically to determine whether they comply with these Rules. This Rule does not restrict referrals or divisions of revenues or net income among lawyers within firms comprised of multiple entities.

## Communications about Fields of Practice

[9] Paragraph (c) of this Rule permits a lawyer to communicate that the lawyer does or does not practice in particular areas of law. A lawyer is generally permitted to state that the lawyer “concentrates in” or is a “specialist,” practices a “specialty,” or “specializes in” particular fields based on the lawyer’s experience, specialized training or education, but such communications are subject to the “false and misleading” standard applied in Rule 7.1 to communications concerning a lawyer’s services.

[10] The Patent and Trademark Office has a long-established policy of designating lawyers practicing before the Office. The designation of Admiralty practice also has a long historical tradition associated with maritime commerce and the federal courts. A lawyer’s communications about these practice areas are not prohibited by this Rule.

[11] This Rule permits a lawyer to state that the lawyer is certified as a specialist in a field of law if such certification is granted by an organization approved by an appropriate authority of a state, the District of Columbia or a U.S. Territory or accredited by the American Bar Association or another organization, such as a state supreme court or a state bar association, that has been approved by the authority of the state, the District of Columbia or a U.S. Territory to accredit organizations that certify lawyers as specialists. Certification signifies that an objective entity has recognized an advanced degree of knowledge and experience in the specialty area greater than is suggested by general licensure to practice law. Certifying organizations may be expected to apply standards of experience, knowledge and proficiency to ensure that a lawyer’s recognition as a specialist is meaningful and reliable. To ensure that consumers can obtain access to useful information about an organization granting certification, the name of the certifying organization must be included in any communication regarding the certification.

## Required Contact Information

[12] This Rule requires that any communication about a lawyer or law firm’s services include the name of, and contact information for, the lawyer or law firm. Contact information includes a website address, a telephone number, an email address or a physical office location.

## RULE 7.3 SOLICITATION OF CLIENTS

(a) “Solicitation” or “solicit” denotes a communication initiated by or on behalf of a lawyer or law firm that is directed to a specific person the lawyer knows or reasonably should know

needs legal services in a particular matter and that offers to provide, or reasonably can be understood as offering to provide, legal services for that matter.

- (b) A lawyer shall not solicit professional employment by live person-to-person contact when a significant motive for the lawyer's doing so is the lawyer's or law firm's pecuniary gain, unless the contact is with a:
  - (1) lawyer;
  - (2) person who has a family, close personal, or prior business or professional relationship with the lawyer or law firm; or
  - (3) person who routinely uses for business purposes the type of legal services offered by the lawyer.
- (c) A lawyer shall not solicit professional employment even when not otherwise prohibited by paragraph (b), if:
  - (1) the target of the solicitation has made known to the lawyer a desire not to be solicited by the lawyer; or
  - (2) the solicitation involves coercion, duress or harassment.
- (d) This Rule does not prohibit communications authorized by law or ordered by a court or other tribunal.
- (e) Notwithstanding the prohibitions in this Rule, a lawyer may participate with a prepaid or group legal service plan operated by an organization not owned or directed by the lawyer that uses live person-to-person contact to enroll members or sell subscriptions for the plan from persons who are not known to need legal services in a particular matter covered by the plan.

## Comments

[1] Paragraph (b) prohibits a lawyer from soliciting professional employment by live person-to-person contact when a significant motive for the lawyer's doing so is the lawyer's or the law firm's pecuniary gain. A lawyer's communication is not a solicitation if it is directed to the general public, such as through a billboard, an Internet banner advertisement, a website or a television commercial, or if it is in response to a request for information or is automatically generated in response to electronic searches.

[2] "Live person-to-person contact" means in-person, face-to-face, live telephone and other real-time visual or auditory person-to-person communications where the person is subject to a direct personal encounter without time for reflection. Such person-to-person contact does not include chat rooms, text messages or other written communications that recipients may easily disregard. A potential for overreaching exists when a lawyer, seeking pecuniary gain, solicits a

person known to be in need of legal services. This form of contact subjects a person to the private importuning of the trained advocate in a direct interpersonal encounter. The person, who may already feel overwhelmed by the circumstances giving rise to the need for legal services, may find it difficult to fully evaluate all available alternatives with reasoned judgment and appropriate self-interest in the face of the lawyer's presence and insistence upon an immediate response. The situation is fraught with the possibility of undue influence, intimidation, and overreaching.

[3] The potential for overreaching inherent in live person-to-person contact justifies its prohibition, since lawyers have alternative means of conveying necessary information. In particular, communications can be mailed or transmitted by email or other electronic means that do not violate other laws. These forms of communications make it possible for the public to be informed about the need for legal services, and about the qualifications of available lawyers and law firms, without subjecting the public to live person-to-person persuasion that may overwhelm a person's judgment.

[4] The contents of live person-to-person contact can be disputed and may not be subject to third-party scrutiny. Consequently, they are much more likely to approach (and occasionally cross) the dividing line between accurate representations and those that are false and misleading.

[5] There is far less likelihood that a lawyer would engage in overreaching against a former client, or a person with whom the lawyer has a close personal, family, business or professional relationship, or in situations in which the lawyer is motivated by considerations other than the lawyer's pecuniary gain. Nor is there a serious potential for overreaching when the person contacted is a lawyer or is known to routinely use the type of legal services involved for business purposes. Examples include persons who routinely hire outside counsel to represent the entity; entrepreneurs who regularly engage business, employment law or intellectual property lawyers; small business proprietors who routinely hire lawyers for lease or contract issues; and other people who routinely retain lawyers for business transactions or formations. Paragraph (b) is not intended to prohibit a lawyer from participating in constitutionally protected activities of public or charitable legal-service organizations or bona fide political, social, civic, fraternal, employee or trade organizations whose purposes include providing or recommending legal services to their members or beneficiaries.

[6] A solicitation that contains false or misleading information within the meaning of Rule 7.1, that involves coercion, duress or harassment within the meaning of Rule 7.3 (c)(2), or that involves contact with someone who has made known to the lawyer a desire not to be solicited by the lawyer within the meaning of Rule 7.3(c)(1) is prohibited. Live, person-to-person contact of individuals who may be especially vulnerable to coercion or duress is ordinarily not appropriate, for example, the elderly, those whose first language is not English, or the disabled.

[7] This Rule does not prohibit a lawyer from contacting representatives of organizations or groups that may be interested in establishing a group or prepaid legal plan for their members, insureds, beneficiaries or other third parties for the purpose of informing such entities of the

availability of and details concerning the plan or arrangement which the lawyer or lawyer's firm is willing to offer. This form of communication is not directed to people who are seeking legal services for themselves. Rather, it is usually addressed to an individual acting in a fiduciary capacity seeking a supplier of legal services for others who may, if they choose, become prospective clients of the lawyer. Under these circumstances, the activity which the lawyer undertakes in communicating with such representatives and the type of information transmitted to the individual are functionally similar to and serve the same purpose as advertising permitted under Rule 7.2.

[8] Communications authorized by law or ordered by a court or tribunal include a notice to potential members of a class in class action litigation.

[9] Paragraph (e) of this Rule permits a lawyer to participate with an organization which uses personal contact to enroll members for its group or prepaid legal service plan, provided that the personal contact is not undertaken by any lawyer who would be a provider of legal services through the plan. The organization must not be owned by or directed (whether as manager or otherwise) by any lawyer or law firm that participates in the plan. For example, paragraph (e) would not permit a lawyer to create an organization controlled directly or indirectly by the lawyer and use the organization for the person-to-person solicitation of legal employment of the lawyer through memberships in the plan or otherwise. The communication permitted by these organizations must not be directed to a person known to need legal services in a particular matter, but must be designed to inform potential plan members generally of another means of affordable legal services. Lawyers who participate in a legal service plan must reasonably assure that the plan sponsors are in compliance with Rules 7.1, 7.2 and 7.3 (c).

#### **RULE 7.4. [DELETED]**

#### **RULE 7.5. [DELETED]**

## **APRL PROPOSED RULES OF PROFESSIONAL CONDUCT 7.1 AND 7.2**

### **RULE 7.1 COMMUNICATIONS CONCERNING A LAWYER'S SERVICES**

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 statement considered as a whole not materially misleading.

#### **Comments**

[1] This Rule governs all communications about a lawyer's services. Whatever means are used to make known a lawyer's services, statements about them must be truthful.

[2] Truthful statements that are misleading are also prohibited by this Rule. 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 there is 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.

[3] An advertisement that truthfully reports a lawyer's achievements on behalf of clients or former clients 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. The inclusion of an appropriate disclaimer or qualifying language may preclude a finding that a statement is likely to create unjustified expectations or otherwise mislead the public.

[4] It is professional conduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit or misrepresentation. Rule 8.4(c). See also Rule 8.4(e) for the prohibition against stating or implying an ability to influence improperly a government agency or official or to achieve results by means that violate the Rules of Professional Conduct or other law.

[5] To assist the public in learning about and obtaining legal services, lawyers should be allowed to make known their services not only through reputation but also through organized information campaigns in the form of advertising. Advertising involves an active quest for clients, contrary to the tradition that a lawyer should not seek clientele. However, the public's need to know about legal services can be fulfilled in part through advertising. This need is particularly acute in the case of persons of moderate means who have not made extensive use of legal services. The interest in expanding public information about legal services ought to prevail over considerations of tradition. Nevertheless, advertising by lawyers entails the risk of practices that are misleading or overreaching. [from MR 7.2 Comments]



[6] This Rule permits public dissemination of information concerning a lawyer's name or firm name, address, email address, website, and telephone number; the kinds of services the lawyer will undertake; the basis on which the lawyer's fees are determined, including prices for specific services and payment and credit arrangements; a lawyer's foreign language ability; names of references and, with their consent, names of clients regularly represented; and other information that might invite the attention of those seeking legal assistance.

## **RULE 7.2 SOLICITATION OF CLIENTS**

- (a) A solicitation is a targeted communication initiated by or on behalf of a lawyer, that is directed to a specific person and that offers to provide, or can reasonably be understood as offering to provide, legal services for a particular matter.
- (b) Except as provided in paragraphs (c) and (e), a lawyer shall not solicit in person by face-to-face contact or live telephone, or permit employees or agents of the lawyer to solicit in person or by live telephone on the lawyer's behalf, professional employment from a prospective client when a significant motive for doing so is the lawyer's pecuniary gain, unless the person contacted:
  - (1) is a lawyer;
  - (2) is a sophisticated user of legal services;
  - (3) is pursuant to a court-ordered class action notification; or
  - (4) has a family, close personal, or prior professional relationship with the lawyer.

### **Written Solicitation**

- (c) Every written, recorded or electronic solicitation by or on behalf of a lawyer seeking professional employment from anyone known to be in need of legal services in a particular matter shall include the words "Advertising Material" on the outside envelope, if any, and at the beginning and ending of any recorded or electronic communication, unless the recipient of the communication is a person specified in paragraphs (b)(1)-(4).

### **Limitation on Solicitation**

- (d) A lawyer shall not solicit professional employment from any person if:
  - (1) the target of the solicitation has made known to the lawyer a desire not to be solicited by the lawyer; or
  - (2) the solicitation involves coercion, duress or harassment.

## Prepaid and Group Legal Services Plans

- (e) Notwithstanding the prohibitions in paragraph (b), a lawyer may participate with a prepaid or group legal service plan operated by an organization not owned or directed by the lawyer that uses in-person contact to solicit memberships or subscriptions for the plan from persons who are not known to need legal services in a particular matter covered by the plan.

## Paying Others to Recommend a Lawyer

- (f) A lawyer shall not compensate, give or promise anything of value to a person who is not an employee or lawyer in the same law firm for the purpose of recommending or securing the services of the lawyer or the lawyer's law firm, except that a lawyer may:
  - (1) pay the reasonable costs of advertisements and other communications permitted by Rule 7.1, including online group advertising;
  - (2) pay the usual charges of a legal service plan or a not-for-profit or qualified lawyer referral service. A qualified lawyer referral service is a lawyer referral service that has been approved by an appropriate regulatory authority;
  - (3) pay for a law practice in accordance with Rule 1.17; and
  - (4) refer clients to another lawyer or a nonlawyer professional pursuant to an agreement not otherwise prohibited under these Rules that provides for the other person to refer clients or customers to the lawyer, if:
    - (i) the reciprocal referral agreement is not exclusive; and
    - (ii) the client is informed of the existence and nature of the agreement.

## Comment

### Solicitation

[1] A lawyer's communication typically does not constitute a solicitation if it is directed to the general public, such as through a billboard, an Internet banner advertisement, a website or a television commercial, or if it is in response to a request for information or is automatically generated in response to Internet searches.

[2] There is a potential for abuse when a solicitation involves in-person, face-to-face or live telephone contact by a lawyer with someone known to need legal services. This form of contact subjects a person to the private importuning of the trained advocate in a direct interpersonal encounter. The person, who may already feel overwhelmed by the circumstances giving rise to the need for legal services, may find it difficult to fully evaluate all available alternatives with reasoned judgment and appropriate self-interest in the face of the lawyer's presence and

insistence upon being retained immediately. The situation is fraught with the possibility of undue influence, intimidation, and over-reaching.

[3] The use of general advertising and written, recorded or electronic communications to transmit information from lawyers to the public, rather than direct in-person, face-to-face or live telephone communication, will help to assure that the information flows cleanly as well as freely. The contents of advertisements and communications permitted under Rule 7.1 can be permanently recorded so that they cannot be disputed and may be shared with others who know the lawyer. This potential for informal review is itself likely to help guard against statements and claims that might constitute false and misleading communications in violation of Rule 7.1. The contents of in-person, face-to-face or live telephone communication can be disputed and may not be subject to third-party scrutiny. Consequently, they are much more likely to approach (and occasionally cross) the dividing line between accurate representations and those that are false and misleading. All solicitations permitted under this Rule must comply with the prohibition in Rule 7.1 against false and misleading communications.

[4] There is far less likelihood that a lawyer would engage in abusive practices against a former client, or a person with whom the lawyer has a close personal or family relationship, or in situations in which the lawyer is motivated by considerations other than the lawyer's pecuniary gain. Nor is there a serious potential for abuse when the person contacted is a lawyer or a sophisticated user of legal services. A sophisticated user of legal services is an individual who has had significant dealings with the legal profession or who regularly retains legal services for business purposes. Consequently, the general prohibition in paragraph (b) and the requirements in paragraph (c) are not applicable in those situations. Also, paragraph (b) is not intended to prohibit a lawyer from participating in constitutionally protected activities of public or charitable legal-service organizations or bona fide political, social, civic, fraternal, employee or trade organizations whose purposes include providing or recommending legal services to their members or beneficiaries.

[5] The requirement in paragraph (c) that certain communications be marked "Advertising Material" does not apply to communications sent in response to requests of potential clients or their spokespersons or sponsors. General announcements by lawyers, including changes in personnel or office location, do not constitute communications soliciting professional employment from a client known to be in need of legal services within the meaning of this Rule.

[6] But even permitted forms of solicitation can be abused. Thus, any solicitation that contains information that is false or misleading within the meaning of Rule 7.1, which involves coercion, duress or harassment within the meaning of paragraph (d)(2), or which involves contact with someone who has made known to the lawyer a desire not to be solicited by the lawyer within the meaning of paragraph (d)(1) is prohibited. Moreover, if after sending a solicitation or other communication as permitted by Rule 7.1 the lawyer receives no response, any further effort to communicate with the recipient of the communication may violate the provisions of paragraph (d).

[7] This Rule is not intended to prohibit a lawyer from contacting representatives of organizations or groups that may be interested in establishing a group or prepaid legal plan for their members, insureds, beneficiaries or other third parties for the purpose of informing such entities of the availability of and details concerning the plan or arrangement which the lawyer or lawyer's firm is willing to offer. This form of communication is not directed to people who are seeking legal services for themselves. Rather, it is usually addressed to an individual acting in a fiduciary capacity seeking a supplier of legal services for others who may, if they choose, become prospective clients of the lawyer. Under these circumstances, the activity that the lawyer undertakes in communicating with such representatives and the type of information transmitted to the individual are functionally similar to and serve the same purpose as advertising permitted under Rule 7.1.

[8] Paragraph (e) of this Rule permits a lawyer to participate with an organization that uses personal contact to solicit members for its group or prepaid legal service plan, provided that the personal contact is not undertaken by any lawyer who would be a provider of legal services through the plan. The organization must not be owned by or directed (whether as manager or otherwise) by any lawyer or law firm that participates in the plan. For example, paragraph (e) would not permit a lawyer to create an organization controlled directly or indirectly by the lawyer and use the organization for the in-person solicitation of legal employment of the lawyer through memberships in the plan or otherwise. The communication permitted by these organizations also must not be directed to a person known to need legal services in a particular matter, but is to be designed to inform potential plan members generally of another means of affordable legal services. Lawyers who participate in a legal service plan must reasonably assure that the plan sponsors are in compliance with Rule 7.1 and this Rule. See Rule 8.4(a).

### **Paying Others to Recommend a Lawyer**

[9] Except as permitted under paragraphs (f)(1)-(f)(4), lawyers are not permitted to pay others for recommending the lawyer's services or for channeling professional work in a manner that violates Rules 7.1 and this Rule. A communication contains a recommendation if it endorses or vouches for a lawyer's credentials, abilities, competence, character, or other professional qualities. Paragraph (f)(1), however, allows a lawyer to pay for advertising and solicitations permitted by Rule 7.1 and this Rule, including the costs of print directory listings, on-line directory listings, newspaper ads, television and radio airtime, domain-name registrations, sponsorship fees, Internet-based advertisements, and group advertising. A lawyer may compensate employees, agents and vendors who are engaged to provide marketing or client development services, such as publicists, public-relations personnel, business-development staff and website designers, as long as the employees, agents and vendors do not direct or regulate the lawyer's professional judgment (see Rule 5.4(c)). Moreover, a lawyer may pay others for generating client leads, such as Internet-based client leads, as long as the lead generator does not recommend the lawyer, any payment to the lead generator is consistent with Rules 1.5(e) (division of fees) and 5.4 (professional independence of the lawyer), and the lead generator's communications are consistent with Rule

7.1 (communications concerning a lawyer's services). To comply with Rule 7.1, a lawyer must not pay a lead generator that states, implies, or creates a reasonable impression that it is recommending the lawyer, is making the referral without payment from the lawyer, or has analyzed a person's legal problems when determining which lawyer should receive the referral. See also Rule 5.3 (duties of lawyers and law firms with respect to the conduct of nonlawyers); Rule 8.4(a) (duty to avoid violating the Rules through the acts of another).

[10] A lawyer may pay the usual charges of a legal service plan or a not-for-profit or qualified lawyer referral service. A legal service plan is a prepaid or group legal service plan or a similar delivery system that assists people who seek to secure legal representation. A lawyer referral service, on the other hand, is any organization that holds itself out to the public as a lawyer referral service. Such referral services are understood by the public to be consumer-oriented organizations that provide unbiased referrals to lawyers with appropriate experience in the subject matter of the representation and afford other client protections, such as complaint procedures or malpractice insurance requirements. Consequently, this Rule only permits a lawyer to pay the usual charges of a not-for-profit or qualified lawyer referral service. A qualified lawyer referral service is one that is approved by an appropriate regulatory authority as affording adequate protections for the public. See, e.g., the American Bar Association's Model Supreme Court Rules Governing Lawyer Referral Services and Model Lawyer Referral and Information Service Quality Assurance Act (requiring that organizations that are identified as lawyer referral services (i) permit the participation of all lawyers who are licensed and eligible to practice in the jurisdiction and who meet reasonable objective eligibility requirements as may be established by the referral service for the protection of the public; (ii) require each participating lawyer to carry reasonably adequate malpractice insurance; (iii) act reasonably to assess client satisfaction and address client complaints; and (iv) do not make referrals to lawyers who own, operate or are employed by the referral service.)

[11] A lawyer also may agree to refer clients to another lawyer or a nonlawyer professional, in return for the undertaking of that person to refer clients or customers to the lawyer. Such reciprocal referral arrangements must not interfere with the lawyer's professional judgment as to making referrals or as to providing substantive legal services. See Rules 2.1 and 5.4(c). Except as provided in Rule 1.5(e), a lawyer who receives referrals from a lawyer or nonlawyer professional must not pay anything solely for the referral, but the lawyer does not violate paragraph (f) of this Rule by agreeing to refer clients to the other lawyer or nonlawyer professional, so long as the reciprocal referral agreement is not exclusive and the client is informed of the referral agreement. Conflicts of interest created by such arrangements are governed by Rule 1.7. Reciprocal referral agreements should not be of indefinite duration and should be reviewed periodically to determine whether they comply with these Rules. This Rule does not restrict referrals or divisions of revenues or net income among lawyers within firms comprised of multiple entities.

## ARIZONA RULES OF PROFESSIONAL CONDUCT 7.1-7.5

### RULE 7.1 COMMUNICATIONS CONCERNING A LAWYER'S SERVICES

A lawyer shall not make a false or misleading communication about the lawyer or the lawyer's services.

- (a) A communication is false or misleading if it contains a material misrepresentation of fact or law, or omits a fact necessary to make the statement considered as a whole not materially misleading.
- (b) A lawyer shall not state or imply that a lawyer is certified as a specialist in a particular field of law, unless the lawyer complies with Arizona Supreme Court Rule 44 requirements.
- (c) Any communication made pursuant to this Rule shall include the name and contact information for at least one lawyer or law firm responsible for its content.

#### Comment

[1] Misleading truthful statements are prohibited by this Rule. 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 there is 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. A truthful statement also is misleading if presented in a way that creates a substantial likelihood that a reasonable person would believe the lawyer's communication requires that person to take further action when, in fact, no action is required.

[2] A communication that truthfully reports a lawyer's achievements on behalf of clients or former clients 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. The inclusion of a clear and conspicuous disclaimer or qualifying language may preclude a finding that a statement is likely to create unjustified expectations or otherwise mislead the public.

[3] It is professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit, or misrepresentation. ER 8.4(c). See also ER 8.4(e) for the prohibition against stating or implying an ability to influence improperly a government agency or official or to achieve results by means that violate the Rules of Professional Conduct or other law.

## Firm Names

[4] Firm names, letterhead and professional designations are communications concerning a lawyer's services. A firm may be designated by the names of all or some of its current members, by the names of deceased members where there has been a succession in the firm's identity or by a trade name if it is not false or misleading. A firm name cannot include the name of a lawyer who is disbarred or on disability inactive status because to continue to use a disbarred lawyer's name is misleading. A lawyer or law firm may be designated by a distinctive website address, social media username or comparable professional designation that is not misleading. A law firm name or designation is misleading if it implies a connection with a government agency, with a deceased lawyer who was not a former member of the firm, with a lawyer not associated with the firm or a predecessor firm, with a nonlawyer or with a public or charitable legal services organization. If a firm uses a trade name that includes a geographical name such as "Springfield Legal Clinic," an express statement explaining that it is not a public legal aid organization may be required to avoid a misleading implication.

[5] A law firm with offices in more than one jurisdiction may use the same name or other professional designation in each jurisdiction. Lawyers may not imply or hold themselves out as practicing together in one firm when they are not a firm, as defined in Rule 1.0(c), because to do so would be false and misleading. It is misleading to use the name of a lawyer holding a public office in the name of a law firm, or in communications on the law firm's behalf, during any substantial period in which the lawyer is not actively and regularly practicing with the firm.

[6] Paragraph (b) of this Rule permits a lawyer to communicate that the lawyer does or does not practice in particular areas of law. A lawyer is generally permitted to state that the lawyer "concentrates in" or is a "specialist," practices a "specialty," or "specializes in" particular fields based on the lawyer's experience, specialized training or education, but such communications are subject to the "false and misleading" standard applied in this Rule to communications concerning a lawyer's services.

## Certified Specialists

[7] The Patent and Trademark Office has a long-established policy of designating lawyers practicing before the Office. The designation of Admiralty practice also has a long historical tradition associated with maritime commerce and the federal courts. A lawyer's communications about these practice areas are not prohibited by this Rule.

[8] This Rule permits a lawyer to state that the lawyer is certified as a specialist in a field of law if such certification is granted by an organization approved by an appropriate authority of a state, the District of Columbia or a U.S. Territory or accredited by the American Bar Association or another organization, such as a state supreme court or a state bar association, that has been approved by the authority of the state, the District of Columbia or a U.S. Territory to accredit organizations that certify lawyers as specialists. Certification signifies that an objective entity has recognized an advanced degree of knowledge and experience in the specialty area greater than is suggested by general licensure to practice law. Certifying organizations may be expected



to apply standards of experience, knowledge and proficiency to ensure that a lawyer's recognition as a specialist is meaningful and reliable. To ensure that consumers can obtain access to useful information about an organization granting certification, the name of the certifying organization must be included in any communication regarding the certification.

### **Required Contact Information**

[9] This Rule requires that any communication about a lawyer or law firm's services include the name of, and contact information for, the lawyer or law firm. Contact information includes a website address, a telephone number, an email address or a physical office location.

## **RULE 7.2 [RESERVED]**

## **RULE 7.3 SOLICITATION OF CLIENTS**

- (a) "Solicitation" or "solicit" denotes a communication initiated by or on behalf of a lawyer or firm that is directed to a specific person the lawyer knows or reasonably should know needs legal services in a particular matter and that offers to provide, or reasonably can be understood as offering to provide, legal services for that matter.
- (b) A lawyer shall not solicit professional employment by live person-to-person when a significant motive for the lawyer's doing so is the lawyer's or firm's pecuniary gain, unless the contact is with a:
  - (1) lawyer; or
  - (2) person who has a family, close personal, or prior business or professional relationship with the lawyer or firm; or
  - (3) person who routinely uses for business purposes the type of legal services offered by the lawyer.
- (c) A lawyer shall not solicit professional employment or knowingly permit solicitation on the lawyer's behalf even when not otherwise prohibited by paragraph (b), if:
  - (1) the target of the solicitation has made known to the lawyer a desire not to be solicited by the lawyer; or
  - (2) the solicitation involves coercion, duress or harassment.
- (d) This Rule does not prohibit communications authorized by law or ordered by a court or other tribunal.
- (e) Notwithstanding the prohibitions in this Rule, a lawyer may participate with a prepaid or group legal service plan operated by an organization not owned or directed by the (a) "Solicitation" or "solicit" denotes a communication initiated by or on behalf of a lawyer or

firm that is directed to a specific person the lawyer knows or reasonably should know needs legal services in a particular matter and that offers to provide, or reasonably can be understood as offering to provide, legal services for that matter.

## Comment

[1] A lawyer's communication is not a solicitation if it is directed to the general public, such as through a billboard, an Internet banner advertisement, a website or a television commercial, or if it is in response to a request for information or is automatically generated in response to electronic searches.

[2] "Live person-to-person contact" means in-person, face-to-face, live telephone and other real-time visual or auditory person-to-person communications, where the person is subject to a direct personal encounter without time for reflection. Such person-to-person contact does not include chat rooms, text messages, or other written communications that recipients may easily disregard. A potential for overreaching exists when a lawyer seeking pecuniary gain solicits a person known to be in need of legal services. This form of contact subjects a person to the private importuning of the trained advocate in a direct interpersonal encounter. The person, who may already feel overwhelmed by the circumstances giving rise to the need for legal services, may find it difficult fully to evaluate all available alternatives with reasoned judgment and appropriate self-interest in the face of the lawyer's presence and insistence upon an immediate response. The situation is fraught with the possibility of undue influence, intimidation, and overreaching.

[3] The potential for overreaching inherent in live person-to-person contact justifies its prohibition, since lawyers have alternative means of conveying necessary information to those who may be in need of legal services. In particular, communications can be mailed or transmitted by email or other electronic means that do not violate other laws. Those forms of communications make it possible for the public to be informed about the need for legal services, and about the qualifications of available lawyers and law firms, without subjecting the public to live person-to-person persuasion that may overwhelm the person's judgment.

[4] The contents of advertisements and communications permitted under ER 7.2 can be permanently recorded so that they cannot be disputed. This potential for informal review is itself likely to help guard against statements and claims that might constitute false and misleading communications, in violation of ER 7.1. The contents of live person-to-person contact can be disputed and may not be subject to third-party scrutiny. Consequently, they are much more likely to approach (and occasionally cross) the dividing line between accurate representations and those that are false and misleading.

[5] There is far less likelihood that a lawyer would engage in overreaching against a former client or a person with whom the lawyer has a close personal, or family, business or professional relationship, or in situations in which the lawyer is motivated by considerations other than the lawyer's pecuniary gain. Nor is there a serious potential for abuse overreaching when the person contacted is a lawyer or is known to routinely use the type of legal services

involved for business purposes. Examples include persons who routinely hire outside counsel to represent the entity; entrepreneurs who regularly engage business, employment law or intellectual property lawyers; small business proprietors who routinely hire lawyers for lease or contract issues; and other people who routinely retain lawyers for business transactions or formations. Paragraph (b) is not intended to prohibit a lawyer from participating in constitutionally protected activities of public or charitable legal-service organizations or bona fide political, social, civic, fraternal, employee or trade organizations whose purposes include providing or recommending legal services to its their members or beneficiaries.

[6] A solicitation that contains false or misleading information within the meaning of ER 7.1, that involves coercion, duress or harassment within the meaning of ER 7.3(b c)(2), or that involves contact with someone who has made known to the lawyer a desire not to be solicited by the lawyer within the meaning of ER 7.3(b c)(1) is prohibited. Live, person-to-person contact of individuals who may be especially vulnerable to coercion or duress ordinarily is not appropriate, including, for example, the elderly, disabled, or those whose first language is not English.

[7] This Rule does not prohibit a lawyer from contacting representatives of organizations or groups that may be interested in establishing a group or prepaid legal plan for their members, insureds, beneficiaries or other third parties for the purpose of informing such entities of the availability of and details concerning the plan or arrangement which the lawyer or lawyer's firm is willing to offer. This form of communication is not directed to people who are seeking legal services for themselves. Rather, it is usually addressed to an individual acting in a fiduciary capacity seeking a supplier of legal services for others who may, if they choose, become prospective clients of the lawyer.

#### **RULE 7.4. [RESERVED]**

#### **RULE 7.5. [RESERVED]**

## UTAH RULE OF PROFESSIONAL CONDUCT 7.1

### RULE 7.1 COMMUNICATIONS CONCERNING A LAWYER'S SERVICES

- (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:
- (1) contains a material misrepresentation of fact or law, or omits a fact necessary to make the statement considered as a whole not materially misleading;
  - (2) is likely to create an unjustified or unreasonable expectation about results the lawyer can achieve or has achieved; or
  - (3) contains a testimonial or endorsement that violates any portion of this Rule.
- (b) A lawyer shall not interact with a prospective client in a manner that involves coercion, duress, or harassment.

#### Comment

[1] This Rule governs all communications about a lawyer's services. Whatever means are used to make known a lawyer's services, statements about them must be truthful.

[2] Truthful statements that are misleading are also prohibited by this Rule. 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 there is 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.

[3] By way of example, this Rule permits the following, so long as they are not false or misleading: public dissemination of information concerning a lawyer's name or firm name, address, email address, website, and telephone number; the kinds of services the lawyer will undertake; the basis on which the lawyer's fees are determined, including prices for specific services and payment and credit arrangements; the use of actors or dramatizations to portray the lawyer, law firm, client, or events; the courts or jurisdictions where the lawyer is permitted to practice, and other information that might invite the attention of those seeking legal assistance.

[4] An advertisement that truthfully reports a lawyer's achievements on behalf of clients or former clients 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. The inclusion of an

appropriate disclaimer or qualifying language may preclude a finding that a statement is likely to create unjustified expectations or otherwise mislead the public.

[5] A lawyer can communicate practice areas and can state that he or she “specializes” in a field based on experience, training, and education, subject to the “false or misleading” standard set forth in this Rule. A lawyer shall not state or imply that the lawyer is certified as a specialist in a particular field unless the lawyer has been certified as a specialist by an objective entity and the name of the entity is clearly identified in the communication.

[6] In order to avoid coercion, duress, or harassment, a lawyer should proceed with caution when initiating contact with someone in need of legal services, especially when the contact is “live,” whether that be in-person, face-to-face, live telephone and other real-time visual or auditory person-to-person communications, where the person is subject to a direct personal encounter without time for reflection.

[7] Firm names, letterhead and professional designations are communications concerning a lawyer’s services. A firm may be designated by the names of all or some of its current members, by the names of deceased or retired members where there has been a succession in the firm’s identity or by a trade name if it is not false or misleading. A lawyer or law firm also may be designated by a distinctive website address, social media username or comparable professional designation that is not misleading. A law firm name or designation is misleading if it implies a connection with a government agency, with a deceased lawyer who was not a former member of the firm, with a lawyer not associated with the firm or a predecessor firm, with a nonlawyer or with a public or charitable legal services organization. If a firm uses a trade name that includes a geographical name such as “Springfield Legal Clinic,” an express statement explaining that it is not a public legal aid organization may be required to avoid a misleading implication.

[8] A law firm with offices in more than one jurisdiction may use the same name or other professional designation in each jurisdiction.

[9] Lawyers may not imply or hold themselves out as practicing together in one firm when they are not a firm, as defined in Rule 1.0(d), because to do so would be false and misleading.

[10] It is misleading to use the name of a lawyer holding public office in the name of a law firm, or in communications on the law firm’s behalf, during any substantial period in which the lawyer is not practicing with the firm. A firm may continue to use in its firm name the name of a lawyer who is serving in Utah’s part-time legislature as long as that lawyer is still associated with the firm.

[11] See Rules 5.3 (duties of lawyers and law firms with respect to the conduct of non-lawyers); Rule 8.4(a) (duty to avoid violating the Rules through the acts of another); and Rule 8.4(e) (prohibition against stating or implying an ability to influence improperly a government agency or official or to achieve results by means that violate the Rules of Professional Conduct or other law).

[12] This Rule differs from the ABA Model Rule. Additional changes have been made to the comments.

## **VIRGINIA RULES OF PROFESSIONAL CONDUCT 7.1 & 7.3**

### **RULE 7.1 COMMUNICATIONS CONCERNING A LAWYER'S SERVICES**

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 statement considered as a whole not materially misleading.

#### **Comment**

[1] Truthful statements that are misleading are also prohibited by this Rule. 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 there is 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.

[2] A communication that truthfully reports a lawyer's achievements on behalf of clients or former clients 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. The inclusion of an appropriate disclaimer or qualifying language may preclude a finding that a statement is likely to create unjustified expectations or otherwise mislead the public.

[3] In communications about a lawyer's services, as in all other contexts, it is professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit or misrepresentation which reflects adversely on the lawyer's fitness to practice law. Rule 8.4(c). See also Rule 8.4(d) for the prohibition against stating or implying an ability to influence improperly a government agency or official or to achieve results by means that violate the Rules of Professional Conduct or other law.

#### **Areas of Expertise/Specialization**

[4] A lawyer may communicate the fact that the lawyer does or does not practice in particular fields of law. A lawyer who is a specialist in a particular field of law by experience, specialized training, or education, or is certified by a named professional entity, may communicate such specialty or certification so long as the statement is not false or misleading.

#### **Firm Names**

[5] A firm may be designated by the names of all or some of its members, by the names of deceased members where there has been a continuing succession in the firm's identity or by a



trade name such as the “ABC Legal Clinic.” A lawyer or law firm may also be designated by a distinctive website address or comparable professional designation. Although the United States Supreme Court has held that legislation may prohibit the use of trade names in professional practice, use of such names in law practice is acceptable so long as it is not misleading. If a private firm uses a trade name such as “clinic” that also includes a geographical name such as “Springfield Legal Clinic,” an express disclaimer that it is not a public legal aid agency may be required to avoid a misleading implication. It may be observed that any firm name including the name of a deceased partner is, strictly speaking, a trade name. The use of such names to designate law firms has proven a useful means of identification. However, it is misleading to use the name of a lawyer not associated with the firm or a predecessor of the firm, or the name of a nonlawyer.

[6] Lawyers may state or imply that they practice in a partnership or other organization only when that is the fact. Lawyers sharing office facilities, but who are not in fact associated with each other in a law firm, may not denominate themselves as, for example, “Smith and Jones,” for that title suggests that they are practicing law together in a firm.

## **RULE 7.3 SOLICITATION OF CLIENTS**

- (a) A solicitation is a communication initiated by or on behalf of a lawyer that is directed to a specific person known to be in need of legal services in a particular matter and that offers to provide, or can reasonably be understood as offering to provide, legal services for that matter.
- (b) A lawyer shall not solicit employment from a potential client if:
  - (1) the potential client has made known to the lawyer a desire not to be solicited by the lawyer; or
  - (2) the solicitation involves harassment, undue influence, coercion, duress, compulsion, intimidation, threats or unwarranted promises of benefits.
- (c) Every written, recorded or electronic solicitation from a lawyer shall conspicuously include the words “ADVERTISING MATERIAL” on the outside envelope, if any, and at the beginning and ending of any recorded or electronic solicitation, unless the recipient of the solicitation:
  - (1) is a lawyer; or
  - (2) has a familial, personal, or prior professional relationship with the lawyer; or
  - (3) is one who has had prior contact with the lawyer.
  - (4) is contacted pursuant to court-ordered notification.

- (d) A lawyer shall not compensate, give, or promise anything of value to a person who is not an employee or lawyer in the same law firm for recommending the lawyer's services except that a lawyer may:
- (1) pay the reasonable costs of advertisements or communications permitted by this Rule and Rule 7.1, including online group advertising;
  - (2) pay the usual charges of a legal service plan or a not-for-profit qualified lawyer referral service;
  - (3) pay for a law practice in accordance with Rule 1.17; and
  - (4) give nominal gifts of gratitude that are neither intended nor reasonably expected to be a form of compensation for recommending a lawyer's services.

## Comment

### Direct Contact between Lawyers and Laypersons

[1] A lawyer's communication typically does not constitute a solicitation if it is directed to the general public, such as through a billboard, an Internet banner advertisement, a website or a television commercial, or if it is in response to a request for information or is automatically generated in response to Internet searches.

[2] There is far less likelihood that a lawyer would engage in abusive practices against an individual who is a former client, or with whom the lawyer has a close personal or family relationship; nor is there a serious potential for abuse when the person contacted is a lawyer or when the person has already initiated contact with the lawyer. Consequently, the requirements of Rule 7.3(c) are not applicable in those situations.

[2a] The requirement in Rule 7.3(c) that certain communications include "ADVERTISING MATERIAL" does not apply to communications sent in response to requests of potential clients or their spokespersons or sponsors; however, prior contact from the lawyer in the form of advertising material does not circumvent the need to include the words "ADVERTISING MATERIAL" in future contacts. General announcements by lawyers, including changes in personnel or office location, do not constitute communications soliciting professional employment from a potential client known to be in need of legal services within the meaning of this Rule.

[3] Even permitted forms of solicitation can be abused; thus, any solicitation that contains information that is false or misleading within the meaning of Rule 7.1, which involves coercion, duress or harassment within the meaning of Rule 7.3(a), or which involves contact with a potential client who has made known to the lawyer a desire not to be solicited by the lawyer within the meaning of Rule 7.3(a), is prohibited. Moreover, if after sending a letter or other communication to a potential client the lawyer receives no response, continued repeated

efforts to communicate with the potential client may constitute harassment and therefore violate the provisions of Rule 7.3(a). Regardless of the form of the communication, its propriety will be judged by the totality of the circumstances under which it is made, including the potential client's sophistication and physical, emotional, and mental state, the nature and characterization of the legal matter, the parties' previous relationship, the lawyer's conduct, and the words spoken.

### **Paying Others to Recommend a Lawyer**

[4] Lawyers are not permitted to pay others for recommending the lawyer's services or for channeling professional work in a manner that violates Rule 7.1 and this Rule. A communication contains a recommendation if it endorses or vouches for a lawyer's credentials, abilities, competence, character, or other professional qualities. However, Paragraph (d)(1) allows a lawyer to pay for advertising and communications permitted by this Rule, including the costs of print directory listings, on-line directory listings, newspaper ads, television and radio airtime, domain-name registrations, sponsorship fees, banner ads, and group advertising. A lawyer may compensate employees, agents, and vendors who are engaged to provide marketing or client-development services, such as publicists, public-relations personnel, business-development staff, and website designers, as long as the employees, agents, and vendors do not direct or control the lawyer's professional judgment in violation of Rule 5.4(c). See Rule 5.3 for the duties of lawyers and law firms with respect to the conduct of nonlawyers who prepare marketing materials for them. Moreover, a lawyer may pay others for generating client leads, such as internet-based client leads, as long as the lead generator does not recommend the lawyer, any payment to the lead generator is consistent with Rule 5.4, and the lead generator's communications are consistent with Rule 7.1. To comply with Rule 7.1, a lawyer must not pay a lead generator that states, implies, or creates a reasonable impression that it is recommending the lawyer, is making the referral without payment from the lawyer, or has analyzed a person's legal problems when determining which lawyer should receive the referral.

[5] Selection of a lawyer by a layperson should be made on an informed basis. Advice and recommendation of third parties—relatives, friends, acquaintances, business associates, or other lawyers—and publicity and personal communications from lawyers may help to make this possible. A lawyer should not compensate another person for recommending him or her, for influencing a potential client to employ him or her, or to encourage future recommendations.

[6] A lawyer may pay the usual charges of a legal service plan or a not-for-profit lawyer referral service. A legal service plan is a prepaid or group legal service plan or a similar delivery system that assists potential clients to secure legal representation. Not-for-profit lawyer referral services are consumer-oriented organizations that provide unbiased referrals to lawyers with appropriate experience in the subject matter of the representation and afford other client protections, such as complaint procedures or malpractice insurance requirements. Consequently, this Rule permits a lawyer to pay only the usual charges of a not-for-profit lawyer referral service.

## WASHINGTON D.C. RULES OF PROFESSIONAL CONDUCT 7.1 and 7.5

### RULE 7.1 COMMUNICATIONS CONCERNING A LAWYER'S SERVICES

- (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:
  - (1) Contains a material misrepresentation of fact or law, or omits a fact necessary to make the statement considered as a whole not materially misleading; or
  - (2) Contains an assertion about the lawyer or the lawyer's services that cannot be substantiated.
- (b) A lawyer shall not seek by in-person contact, employment (or employment of a partner or associate) by a nonlawyer who has not sought the lawyer's advice regarding employment of a lawyer, if:
  - (1) The solicitation involves use of a statement or claim that is false or misleading, within the meaning of paragraph (a);
  - (2) The solicitation involves the use of coercion, duress or harassment; or
  - (3) The potential client is apparently in a physical or mental condition which would make it unlikely that the potential client could exercise reasonable, considered judgment as to the selection of a lawyer.
- (c) A lawyer shall not pay money or give anything of material value to a person (other than the lawyer's partner or employee) in exchange for recommending the lawyer's services except that a lawyer may:
  - (1) Pay the reasonable costs of advertisements or communications permitted by this Rule;
  - (2) Pay the usual and reasonable fees or dues charged by a legal service plan or a lawyer referral service;
  - (3) Pay for a law practice in accordance with Rule 1.17; and
  - (4) Refer clients to another lawyer or nonlawyer professional pursuant to an agreement not otherwise prohibited under these Rules that provides for the other person to refer clients or customers to the lawyer, if:
    - (A) The reciprocal agreement is not exclusive, and
    - (B) The client is informed of the existence and nature of the agreement.

- (d) A lawyer shall not knowingly assist an organization that furnishes or pays for legal services to others to promote the use of the lawyer's services or those of the lawyer's partner or associate, or any other lawyer affiliated with the lawyer or the lawyer's firm, as a private practitioner, if the promotional activity involves the use of coercion, duress, compulsion, intimidation, threats, or vexatious or harassing conduct.
- (e) No lawyer or any person acting on behalf of a lawyer shall solicit or invite or seek to solicit any person for purposes of representing that person for a fee paid by or on behalf of a client or under the Criminal Justice Act, D.C. Code Ann. §11-2601 (2001) et seq., in any present or future case in the District of Columbia Courthouse, on the sidewalks on the north, south, and west sides of the courthouse, or within 50 feet of the building on the east side.
- (f) Any lawyer or person acting on behalf of a lawyer who solicits or invites or seeks to solicit any person incarcerated at the District of Columbia Jail, the Correctional Treatment Facility or any District of Columbia juvenile detention facility for the purpose of representing that person for a fee paid by or on behalf of that person or under the Criminal Justice Act, D.C. Code Ann. §11-2601 (2001) et seq., in any then-pending criminal case in which that person is represented, must provide timely and adequate notice to the person's then-current lawyer prior to accepting any fee from or on behalf of the incarcerated person.

## Comment

[1] This rule governs all communications about a lawyer's services, including advertising. It is especially important that statements about a lawyer or the lawyer's services be accurate, since many members of the public lack detailed knowledge of legal matters. Certain advertisements such as those that describe the amount of a damage award, the lawyer's record in obtaining favorable verdicts, or those containing client endorsements, unless suitably qualified, have a capacity to mislead by creating an unjustified expectation that similar results can be obtained for others. Advertisements comparing the lawyer's services with those of other lawyers are false or misleading if the claims made cannot be substantiated.

## Advertising

[2] To assist the public in obtaining legal services, lawyers should be allowed to make known their services not only through reputation but also through organized information campaigns in the form of advertising. Advertising involves an active quest for clients, contrary to the tradition that a lawyer should not seek clientele. However, the public's need to know about legal services can be fulfilled in part through advertising. This need is particularly acute in the case of persons of limited means who have not made extensive use of legal services. The interest in expanding public information about legal services ought to prevail over considerations of tradition.

[3] This rule permits public dissemination of information concerning a lawyer's name or firm name, address, and telephone number; the kinds of services the lawyer will undertake; the basis on which the lawyer's fees are determined, including prices for specific services and

payment and credit arrangements; a lawyer's foreign language ability; names of references and, with their consent, names of clients regularly represented; and other information that might invite the attention of those seeking legal assistance.

[4] Questions of effectiveness and taste in advertising are matters of speculation and subjective judgment. Some jurisdictions have rules regulating the type and content of advertising by lawyers that go beyond prohibitions against false or misleading statements. Such regulations create unneeded barriers to the flow of information about lawyers' services to persons needing such services, and so this rule subjects advertising by lawyers only to the requirement that it not be false or misleading.

[5] There is no significant distinction between disseminating information and soliciting clients through mass media or through individual personal contact. In-person solicitation (which would include telephone contact but not electronic mail) can, however, create problems because of the particular circumstances in which the solicitation takes place. This rule prohibits in-person solicitation in circumstances or through means that are not conducive to intelligent, rational decisions. Such circumstances and means could be the harassment of early morning or late night telephone calls to a prospective client to solicit legal work, or repeated calls at any time of day, and solicitation of an accident victim or the victim's family shortly after the accident or while the victim is still in medical distress. A lawyer is no longer permitted to conduct in-person solicitation through the use of a paid intermediary, i.e., a person who is neither the lawyer's partner (as defined in Rule 1.0(i)) nor employee (see Rule 5.3) and who is compensated for such services. This prohibition represents a change in Rule 7.1(b), which had previously authorized payments to intermediaries for recommending a lawyer. Experience under the former provision showed it to be unnecessary and subject to abuse. See Rules 5.3, 8.4(a), and 8.4(c) regarding a lawyer's responsibility for abusive or deceptive solicitation of a client by the lawyer's employee.

[6] Rule 7.1(c) does not address fee splitting between two or more firms representing the same client in the same project. Compare Rule 1.5(e). Lawyers must also be aware of their obligation to maintain their professional independence under Rule 5.4.

[7] A lawyer may agree to refer clients to another lawyer or a nonlawyer professional, in return for the undertaking of that person to refer clients or customers to the lawyer. Such reciprocal referral arrangements must not interfere with the lawyer's professional judgment as to making referrals or as to providing substantive legal services. See Rules 2.1 and 5.4(c). Except as provided in Rule 1.5(e), a lawyer who receives referrals from a lawyer or nonlawyer professional must not pay money or give anything of material value solely for the referral, but the lawyer does not violate paragraph (c) of this Rule by agreeing to refer clients to the other lawyer or nonlawyer professional, so long as the reciprocal referral agreement is not exclusive and the client is informed of the referral agreement. Conflicts of interest created by such arrangements are governed by Rule 1.7. Reciprocal referral agreements should not be of indefinite duration and should be reviewed periodically to determine whether they comply with these Rules. This Rule does not restrict referrals or divisions of revenues or net income among lawyers within firms comprised of multiple entities.

### **Payments for Advertising**

[8] A lawyer is allowed to pay for advertising or marketing permitted by this rule. Likewise, a lawyer may participate in lawyer referral programs and pay the usual fees charged by such programs.

### **Solicitations in the Vicinity of the District of Columbia Courthouse**

[9] Paragraph (e) is designed to prohibit unseemly solicitations of prospective clients in and around the District of Columbia Courthouse. The words “for a fee paid by or on behalf of a client or under the Criminal Justice Act” have been added to paragraph (e) as it was originally promulgated by the District of Columbia Court of Appeals in 1982. The purpose of the addition is to permit solicitation in the District of Columbia Courthouse for the purposes of pro bono representation. For the purposes of this rule, pro bono representation, whether by individual lawyers or nonprofit organizations, is representation undertaken primarily for purposes other than a fee. That representation includes providing services free of charge for individuals who may be in need of legal assistance and may lack the financial means and sophistication necessary to have alternative sources of aid. Cases where fees are awarded under the Criminal Justice Act do not constitute pro bono representation for the purposes of this rule. However, the possibility that fees may be awarded under the Equal Access to Justice Act and Civil Rights Attorneys’ Fees Awards Act of 1976, as amended, or other statutory attorney fee statutes, does not prevent representation from constituting pro bono representation.

### **Solicitations of Inmates**

[10] Paragraph (f) is designed to address the vulnerability of incarcerated persons to lawyers seeking fee-paying representations. It applies only to situations where the incarcerated person has not initiated contact with the lawyer. In such situations, the lawyer may have contact with the individual but may not accept a fee unless and until timely notice is provided to current counsel for such incarcerated person.

## **RULE 7.5 FIRM NAME AND LETTERHEADS**

- (a) A lawyer shall not use a firm name, letterhead, or other professional designation that violates Rule 7.1. A trade name may be used by a lawyer in private practice if it does not imply a connection with a government agency or with a public or charitable legal services organization and is not otherwise in violation of Rule 7.1.
- (b) A law firm with offices in more than one jurisdiction may use the same name or other professional designation in each jurisdiction, but identification of the lawyers in an office of the firm shall indicate the jurisdictional limitations on those not licensed to practice in the jurisdiction where the office is located.



- (c) The name of a lawyer holding a public office shall not be used in the name of a law firm, or in communications on its behalf, during any substantial period in which the lawyer is not actively and regularly practicing with the firm.
- (d) Lawyers may state or imply that they practice in a partnership or other organization only when that is the fact.

## Comment

[1] A firm may be designated by the names of all or some of its members, by the names of deceased members where there has been a continuing succession in the firm's identity, or by a trade name such as the "ABC Legal Clinic." A lawyer or law firm may also be designated by a distinctive website address or comparable professional designation. Although the United States Supreme Court has held that legislation may prohibit the use of trade names in professional practice, use of such names in law practice is acceptable so long as it is not misleading. If a private firm uses a trade name that includes a geographical name such as "Springfield Legal Clinic," an express disclaimer that it is a public legal aid agency may be required to avoid a misleading implication. It may be observed that any firm name including the name of a deceased partner is, strictly speaking, a trade name. The use of such names to designate law firms has proven a useful means of identification. However, it is misleading to use the name of a lawyer not associated with the firm or a predecessor of the firm. It is also misleading to continue to use the name of a lawyer formerly associated with the firm who currently is practicing elsewhere. See D.C. Bar Legal Ethics Committee Opinion 277.

[2] With regard to paragraph (d), lawyers sharing office facilities, but who are not in fact associated with each other in a law firm, may not denominate themselves as, for example, "Smith and Jones," for that title suggests that they are practicing law together in a firm.

## WASHINGTON RULES OF PROFESSIONAL CONDUCT 7.1-7.5

### RULE 7.1 COMMUNICATIONS CONCERNING A LAWYER'S SERVICES

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 statement considered as a whole not materially misleading.

#### Comment

[1] [Washington revision] This Rule governs all communications about a lawyer's services. Whatever means are used to make known a lawyer's services, statements about them must be truthful.

[2] Truthful statements that are misleading are also prohibited by this Rule. 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 there is 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.

[3] An advertisement that truthfully reports a lawyer's achievements on behalf of clients or former clients 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. The inclusion of an appropriate disclaimer or qualifying language may preclude a finding that a statement is likely to create unjustified expectations or otherwise mislead the public.

[4] [Washington revision] It is professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit or misrepresentation. RPC 8.4(c). See also Rule 8.4(e) for the prohibition against stating or implying an ability to influence improperly a government agency or official or to achieve results by means that violate the Rules of Professional Conduct or other law.

[5] To assist the public in learning about and obtaining legal services, lawyers should be allowed to make known their services not only through reputation but also through organized information campaigns in the form of advertising. Advertising involves an active quest for clients, contrary to the tradition that a lawyer should not seek clientele. However, the public's need to know about legal services can be fulfilled in part through advertising. This need is particularly acute in the case of persons of moderate means who have not made extensive use of legal services. The interest in expanding public information about legal services ought to

prevail over considerations of tradition. Nevertheless, advertising by lawyers entails the risk of practices that are misleading or overreaching.

[6] This rule permits public dissemination of information concerning a lawyer's name or firm name, address, e-mail address, website, and telephone number; the kinds of services the lawyer will undertake; the basis on which the lawyer's fees are determined, including prices for specific services and payment and credit arrangements; a lawyer's foreign language ability; names of references and, with their consent, names of clients regularly represented; and other information that might invite the attention of those seeking legal assistance.

[7] Questions of effectiveness and taste in advertising are matters of speculation and subjective judgment. Some jurisdictions have had extensive prohibitions against television and other forms of advertising, against advertising going beyond specified facts about a lawyer, or against "undignified" advertising. Television, the Internet, and other forms of electronic communication are now among the most powerful media for getting information to the public, particularly persons of low and moderate income; prohibiting television, Internet, and other forms of electronic advertising, therefore, would impede the flow of information about legal services to many sectors of the public. Limiting the information that may be advertised has a similar effect and assumes that the bar can accurately forecast the kind of information that the public would regard as relevant.

#### **Areas of Expertise/Specialization**

[8] A lawyer may indicate areas of practice in communications about the lawyer's services. If a lawyer practices only in certain fields, or will not accept matters except in a specified field or fields, the lawyer is permitted to so indicate. A lawyer is generally permitted to state that the lawyer is a "specialist," practices a "specialty," or "specializes in" particular fields, but such communications are subject to the "false and misleading" standard applied in RPC 7.1 to communications concerning a lawyer's services. A lawyer may state that the lawyer is certified as a specialist in a field of law if such certification is granted by an organization approved by an appropriate state authority or accredited by the American Bar Association or another organization, such as a state bar association, that has been approved by the state authority to accredit organizations that certify lawyers as specialists. Certification signifies that an objective entity has recognized an advanced degree of knowledge and experience in the specialty area greater than is suggested by general licensure to practice law. Certifying organizations may be expected to apply standards of experience, knowledge and proficiency to insure that a lawyer's recognition as a specialist is meaningful and reliable. In order to insure that consumers can obtain access to useful information about an organization granting certification, the name of the certifying organization must be included in any communication regarding the certification.

[9] In advertising concerning an LLLT's services, an LLLT is required to communicate the fact that the LLLT has a limited license in the particular fields of law for which the LLLT is licensed and must not state or imply that the LLLT has broader authority to practice than is in fact the case. See LLLT RPC 7.1(b). When lawyers and LLLTs are associated in a firm, lawyers with

managerial or pertinent supervisory authority must take measures to assure that the firm's communications conform with these obligations. See Rule 5.10.

### **Firm Names**

[10] A firm may be designated by the names of all or some of its members, by the names of deceased members where there has been a continuing succession in the firm's identity or by a trade name such as the "ABC Legal Clinic." A lawyer or law firm may also be designated by a distinctive website address or comparable professional designation. Although the United States Supreme Court has held that legislation may prohibit the use of trade names in professional practice, use of such names in law practice is acceptable so long as it is not misleading. If a private firm uses a trade name that includes a geographical name such as "Springfield Legal Clinic," an express disclaimer that it is a public legal aid agency may be required to avoid a misleading implication. It may be observed that any firm name including the name of a deceased partner is, strictly speaking, a trade name. The use of such names to designate law firms has proven a useful means of identification. However, it is misleading to use the name of a lawyer or LLLT not associated with the firm or a predecessor of the firm, or the name of an individual who is neither a lawyer nor an LLLT.

[11] Lawyers or LLLTs sharing office facilities, but who are not in fact associated with each other in a law firm, may not denominate themselves as, for example, "Smith and Jones," for that title suggests that they are practicing law together in a firm.

[12] When lawyers and LLLTs are associated with each other in a law firm, the firm may be designated using the name of a member LLLT if the name is not otherwise in violation of this rule.

[13] Lawyers or LLLTs practicing out of the same office who are not partners, shareholders of a professional corporation, or members of a professional limited liability company or partnership may not join their names together. Lawyers or LLLTs who are not (1) partners, shareholders of a professional corporation, or members of a professional limited liability company or partnership, or (2) employees of a sole proprietorship, partnership, professional corporation, or members of a professional limited liability company or partnership or other organization, or (3) in the relationship of being "Of Counsel" to a sole proprietorship, partnership, professional corporation, or members of a professional limited liability company or partnership or other organization, must have separate letterheads, cards, and pleading paper, and must sign their names individually at the end of all pleadings and correspondence and not in conjunction with the names of other lawyers or LLLTs.

[14] A law firm with offices in more than one jurisdiction may use the same name or other professional designation in each jurisdiction. See RPC 5.5(f) & cmt. [22]. In order to avoid misleading the public, when lawyers or LLLTs are identified as practicing in a particular office, the firm should indicate the jurisdictional limitations on those not licensed to practice in the jurisdiction where the office is located.

## **RULE 7.2 [RESERVED]**

### **RULE 7.3 SOLICITATION OF CLIENTS**

- (a) A lawyer may solicit professional employment unless:
  - (1) the solicitation is false or misleading;
  - (2) the lawyer knows or reasonably should know that the physical, emotional, or mental state of the subject of the solicitation is such that the person could not exercise reasonable judgment in employing a lawyer;
  - (3) the subject of the solicitation has made known to the lawyer a desire not to be solicited by the lawyer; or
  - (4) the solicitation involves coercion, duress, or harassment.
- (b) A lawyer shall not compensate, or give or promise anything of value to, a person who is not an employee or lawyer in the same law firm for the purpose of recommending or securing the services of the lawyer or law firm, except that a lawyer may:
  - (1) pay the reasonable cost of advertisements or communications permitted by RPC 7.1, including online group advertising;
  - (2) pay the usual charges of a legal service plan or a not-for-profit lawyer referral service;
  - (3) pay for a law practice in accordance with RPC 1.17;
  - (4) refer clients to another lawyer or LLLT or other nonlawyer professional pursuant to an agreement not otherwise prohibited under these Rules that provides for the other person to refer clients or customers to the lawyer, if:
- (c) the reciprocal referral agreement is not exclusive, and
- (d) the client is informed of the existence and nature of the agreement;
  - (1) give nominal gifts that are neither intended nor reasonably expected to be a form of compensation for recommending a lawyer's services.
- (e) [Reserved.]
- (f) [Reserved.]

## Comments

[1] [Washington revision.] A solicitation is a targeted communication initiated by or on behalf of a lawyer that is directed to a specific person and that offers to provide, or can reasonably be understood as offering to provide, legal services. Solicitations can include in-person, written, telephonic, and electronic communications. In contrast, a lawyer's communication typically does not constitute a solicitation if it is directed to the general public, such as through a billboard, an Internet banner advertisement, a website, or a television commercial, or if it is in response to a request for information or is automatically generated in response to Internet searches.

[2] [Reserved.]

[3] [Reserved.]

[4] [Reserved.]

[5] [Reserved.]

[6] [Reserved.]

[7] [Reserved.]

[8] [Reserved.]

[9] [Reserved.]

## Additional Washington Comments (10-16)

[10] While all communications about a lawyer's services are subject to the general prohibition against false or misleading communication in RPC 7.1, in-person solicitation can create problems because of the particular circumstances in which the solicitation takes place, and those circumstances are, therefore, appropriately regulated. Subsection (a) of this rule prohibits solicitation in circumstances or through means that are not conducive to intelligent, rational decisions. Unwanted solicitations (after the subject has informed the lawyer not to make contact) or solicitations involving coercion, duress, or harassment are specifically prohibited. Such circumstances and means could be the harassment of early morning or late-night telephone calls to a potential client to solicit legal work, repeated calls at any time of day, solicitation of an accident victim or the victim's family shortly after the accident or while the victim is still in medical distress (particularly where a lawyer seeks professional employment by in-person or other real-time contact in such circumstances), or solicitation of vulnerable subjects, such as persons facing incarceration, or their family members, in or near a courthouse. The prohibition on solicitation of a subject who cannot "exercise reasonable judgment in employing a lawyer" extends to an individual with diminished capacity who cannot adequately

act in the individual's own interest, and the provisions of RPC 1.14 may provide guidance in evaluating "the physical, emotional, or mental" state of the subject.

[11] Under RPC 5.1, RPC 5.3, and RPC 8.4(a), the solicitation restrictions that apply to the lawyer's own acts or conduct also extend to acts or conduct by employees, agents, or any third persons acting on the lawyer's behalf.

[12] Washington has not adopted subsection (e) of the Model Rule creating a safe harbor for in person and telephonic solicitations in the context of a prepaid or group legal services plan because solicitations of professional employment by any means and in all contexts are permitted subject to the exceptions contained in subsection (a)(1) – (4). In addition, prior provisions and comments under RPC 7.3 in Washington relating to in-person, telephonic, or real-time electronic solicitations in the context of referrals from a third party or a lawyer referral service have been removed because solicitations by any means in this context are permitted subject to the exceptions contained in paragraphs (a)(1)–(4) of this RPC.

### **Paying Others to Recommend a Lawyer**

[13] Subsection (b) of this rule was derived from former Washington RPC 7.2(b).

[14] Except as permitted under subsections (b)(1)-(b)(5), lawyers are not permitted to pay others for recommending the lawyer's services or for channeling professional work in a manner that violates RPC 7.1 or RPC 7.3. A communication contains a recommendation if it endorses or vouches for a lawyer's credentials, abilities, competence, character, or other professional qualities. Subsection (b)(1), however, allows a lawyer to pay for advertising and solicitations permitted by RPC 7.1 and this rule, including the costs of print directory listings, online directory listings, newspaper ads, television and radio airtime, domain-name registrations, sponsorship fees, Internet-based advertisements, and group advertising. A lawyer may compensate employees, agents, and vendors who are engaged to provide marketing or client-development services, such as publicists, public-relations personnel, business-development staff, and website designers, as long as the employees, agents, and vendors do not direct or regulate the lawyer's professional judgment (see RPC 5.4(c)). Moreover, a lawyer may pay others for generating client leads, such as Internet-based client leads, as long as the lead generator does not recommend the lawyer, any payment to the lead generator is consistent with RPC 1.5(e) (division of fees) and 5.4 (professional independence of the lawyer), and the lead generator's communications are consistent with RPC 7.1 (communications concerning a lawyer's services). To comply with RPC 7.1, a lawyer must not pay a lead generator that states, implies, or creates a reasonable impression that it is recommending the lawyer, is making the referral without payment from the lawyer, or has analyzed a person's legal problems when determining which lawyer should receive the referral. See also RPC 5.3 (duties of lawyers and law firms with respect to the conduct of nonlawyers); RPC 8.4(a) (duty to avoid violating the rules through the acts of another). For the definition of nonlawyer for the purposes of RPC 5.3, see Washington cmt. 5 to Rule 5.3.

[15] A lawyer may pay the usual charges of a legal service plan or a not-for-profit lawyer referral service. A “legal service plan” is a prepaid or group legal service plan or a similar delivery system that assists people who seek to secure legal representation. A “lawyer referral service,” on the other hand, is any individual or entity that operates for the direct or indirect purpose of referring potential clients to lawyers, regardless of whether the term “referral service” is used. The “usual charges” of a legal service plan or not-for-profit lawyer referral service are fees that are openly promulgated and uniformly applied. Not-for-profit lawyer referral services are understood by the public to be consumer-oriented organizations that provide unbiased referrals to lawyers with appropriate experience in the subject matter of the representation and afford other client protections, such as complaint procedures or malpractice insurance requirements.

[16] A lawyer also may agree to refer clients to another lawyer or LLLT or other nonlawyer professional in return for the undertaking of that person to refer clients or customers to the lawyer. Such reciprocal referral arrangements must not interfere with the lawyer’s professional judgment as to making referrals or as to providing substantive legal services. See RPC 2.1 and 5.4(c). Except as provided in RPC 1.5(e), a lawyer who receives referrals from a lawyer or LLLT or other nonlawyer professional must not pay anything solely for the referral, but the lawyer does not violate this Rule by agreeing to refer clients to the other lawyer or LLLT or other nonlawyer professional, so long as the reciprocal referral agreement is not exclusive and the client is informed of the referral agreement. Conflicts of interest created by such arrangements are governed by RPC 1.7. Reciprocal referral agreements should not be of indefinite duration and should be reviewed periodically to determine whether they comply with these rules. This rule does not restrict referrals or divisions of revenues or net income among lawyers within firms comprised of multiple entities. Under LLLT RPC 1.5(e), however, an LLLT may not enter into an arrangement for the division of a fee with a lawyer who is not in the same firm as the LLLT.

#### **RULE 7.4. [RESERVED]**

#### **RULE 7.5. [RESERVED]**