IN THE SUPREME COURT, STATE OF WYOMING

April Term, A.D. 2019

In the Matter of the Amendments to	***)***
Wyoming Rules of Professional	***)***
Conduct for Attorneys at Law	***)***

ORDER AMENDING THE RULES OF PROFESSIONAL CONDUCT FOR ATTORNEYS AT LAW

The Officers and Commissioners of the Wyoming State Bar have recommended that the Wyoming Supreme Court amend the Rules of Professional Conduct for Attorneys at Law. That recommendation was made following a joint proposal from the Board of Professional Responsibility and the Review and Oversight Committee, in collaboration with the Office of Bar Counsel. The proposed amendments were also submitted to the members of the Wyoming State Bar for comment. Now, having carefully reviewed the proposed amendments to the Rules of Professional Conduct for Attorneys at Law, the Court finds the proposed amendments should be adopted. It is, therefore,

ORDERED that the amendments to the Rules of Professional Conduct for Attorneys at Law, attached hereto, be, and hereby are, adopted by the Court to be effective September 1, 2019; and it is further

ORDERED that this order and the amendments be published in the advance sheets of the Pacific Reporter; the amendments be published in the Wyoming Court Rules Volume; and that this order and the amendments be published online at the Wyoming Judicial Branch's website, http://www.courts.state.wy.us. The amendments to the Rules of Professional Conduct for Attorneys at Law shall also be recorded in the journal of this Court.

DATED this 25th day of June, 2019.

BY THE COURT:

/s/

MICHAEL K. DAVIS
Chief Justice

RULES OF PROFESSIONAL CONDUCT FOR ATTORNEYS AT LAW

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Rule 1.5. Fees.

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(e) A division of a fee between lawyers who are not in the same firm may be made only if:

(1) the division is in proportion to the services performed by each lawyer ~~and,~~ or each lawyer assumes joint responsibility for the representation;

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Rule 1.15. Safekeeping Property.

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(j) If the owner of property being held in trust by a member of the Wyoming State Bar cannot be located after reasonable efforts, such property shall be remitted to the ~~Wyoming State Treasurer pursuant to the Wyoming Uniform Unclaimed Property Act, W.S. § 34-24-101 et seq.~~ Client Protection Fund of the Wyoming State Bar.

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Rule 1.15A. Client Files.

(a) For purposes of this Rule, the client's file consists of the following physical and electronically stored materials:

(1) all papers, documents, and other materials, whether in physical or electronic form, that the client supplied to the lawyer;

(2) all correspondence relating to the matter, whether in physical or electronic form;

(3) all pleadings and other papers filed with or by the court, administrative tribunal, arbitrator or mediator or served by or upon any party relevant to the client's claims or defenses;

(4) all investigatory or discovery documents, including but not limited to medical records, photographs, tapes, disks, investigative reports, expert reports, depositions, and demonstrative evidence; and

(5) all intrinsically valuable documents of the client.

Paragraph (a) does not impose an obligation to preserve documents that a lawyer following customary practices would not normally preserve in the client's file. For purposes of subparagraph (5), documents are intrinsically valuable where they constitute trust property

as defined in Rule 1.15 or have legal, operative, personal, historical or other significance in themselves, including wills, trusts and other executed estate planning documents, deeds, securities, negotiable instruments, and official corporate or other records.

(b) A lawyer must make the client's file available to a client or former client in either commonly available electronic or hard copy form as reasonably acceptable to the client or former client, within a reasonable time following the client's or former client's request for the file, provided however, that:

> **(1) the lawyer may at the lawyer's own expense retain electronic or paper copies of documents turned over to the client; and**
>
> **(2) the lawyer is not required to turn over to the client documents for which the client is obligated to pay under the fee agreement but has not paid.**

(c) Except for materials governed by paragraphs (d), (e) and (f), a lawyer shall take reasonable measures to retain a client's file in a matter until at least five years have elapsed after completion of the matter or termination of the representation in the matter unless

> **(1) the lawyer has transferred the file or items to the client or successor counsel, or as otherwise directed by the client, or**
>
> **(2) the client agrees in writing to an alternative arrangement for the file's custody or destruction, provided, however, that files relating to the representation of a minor shall be retained until at least five years after the minor reaches the age of majority.**

If the client has not requested the file within five years after completion or termination of the representation or within five years after a minor reaches the age of majority, the file may be destroyed except as provided in paragraphs (d), (e), and (f) below.

(d) Intrinsically valuable documents that constitute trust property of the client must be delivered to the client as provided in Rule 1.15. All other intrinsically valuable documents must be appropriately safeguarded and delivered in accordance with paragraph (b) above or retained until such time as the documents no longer possess intrinsic value. If the client cannot be found, the lawyer shall securely retain such documents or, where applicable, deliver such items to an appropriate governmental repository.

(e) A lawyer shall not destroy a client's file if the lawyer knows or reasonably should know that:

> **(1) a lawsuit or other legal claim related to the client matter is pending or reasonably anticipated;**
>
> **(2) a criminal or other governmental investigation related to the client matter is pending or reasonably anticipated; or**

(3) a disciplinary investigation or proceeding related to the client matter or a claim before the Client Protection Fund Committee is pending or reasonably anticipated.

(f) Criminal defense counsel, counsel in juvenile cases and protective counsel appointed pursuant to the Wyoming Rules of Disciplinary Procedure shall retain a client's files as follows:

(1) for the life of the client if the matter resulted in a conviction and a sentence of death or life imprisonment with or without the possibility of parole;

(2) in all other criminal matters, for ten years after the latest of the completion of the representation, the conclusion of all direct appeals, or the running of an incarcerated defendant's maximum period of incarceration, but in no event longer than the life of the client; and

(3) in all juvenile matters, for five years after the later of the completion of the representation or the conclusion of all direct appeals, but in no event longer than the life of the client;

(g) A lawyer shall take reasonable measures to ensure that the destruction of all or any portion of a client file shall be carried out in a manner consistent with all applicable confidentiality obligations.

COMMENT

[1] In order to represent clients competently in a matter, lawyers customarily maintain a file of papers and electronically stored information that will in the lawyers' judgment aid in the representation. This Rule governs lawyers' obligations with respect to the custody and destruction of client files. A lawyer's obligations with respect to client funds and trust property such as jewelry or other valuables are governed by Rule 1.15. Lawyers are encouraged to address disposition of client files in a written engagement letter and, in instances where particular arrangements for disposition or transfer have not been made, in the lawyer's final communication to the client at the conclusion of a matter.

[2] The client's file in a given matter consists of those items that must be made available upon the client's direction to the client or successor counsel to provide a reasonably complete record of the services provided and, if the matter is unfinished, to give successor counsel what is needed to complete the representation. Thus, the client file for a litigation matter would include the pleadings and court filings, rulings and other documents issued by the court, all correspondence including with the client and opposing counsel, deposition transcripts, documents produced or received in discovery (subject to applicable protective orders), investigatory materials and expert reports, the trial record, memorialized legal research and analysis, and any settlement documents. In a case with a limited number of parties, the pleadings would include all the material pleadings. In a large case with many parties, such as a large bankruptcy proceeding, the pleadings would only include those directly relevant to the client's claims and defenses. The client file for a transactional matter would include all correspondence, including with the client and counterparties and the exchange

of drafts, contracts and other documents establishing the terms of the transaction (often gathered into a "closing binder"), and memorialized legal research and analysis.

[3] Multiple copies or drafts of the same document ordinarily do not constitute part of the client's file unless the matter is unfinished, and the client and successor counsel must have the drafts to complete the representation. Similarly, a lawyer's personal notes ordinarily do not constitute part of the client's file unless the notes are the only record of a witness interview, a settlement negotiation, a meeting with regulators or prosecutors, or some similar event. Once a document is finalized or personal notes of an event are memorialized, this Rule does not require preservation of the drafts or notes. However, documents that are part of the client's file at the time of a request for the file must thereafter be preserved and produced. Except as provided in comment [4], this Rule does not require preservation of any physical documents that have been converted to electronic form.

[4] Unless other applicable law requires a particular document to be physically preserved for its legal effectiveness, a lawyer may maintain a client's file in electronic form, provided, however, that, for documents stored only in electronic form, the lawyer must make reasonable efforts to store such electronic files in a form that can be read with available technology for any period during which the file must be retained. If the original form of the document is important, however, it should not be destroyed without the client's permission.

[5] The client's file does not include a lawyer's administrative files such as conflict checks, billing and accounting records, and communications within a law firm concerning matters of administration such as account creation, billing and collections, logistics, and the assignment and evaluation of personnel assigned to the matter. Such documents may be subject to discovery in a dispute concerning the representation, but ordinarily do not need to be provided to the client or successor counsel at the client's direction.

[6] Rule 1.15A does not supersede obligations imposed by court order, rules of a tribunal, or other law including discovery rules in civil cases, subpoenas and other mandatory process, and the law of spoliation and obstruction of justice. The maintenance of records required for trust property and trust accounts is governed exclusively by Rule 1.15. A document may be subject to more than one retention requirement, in which case the lawyer should retain the document for the longest applicable period.

[7] Under paragraphs (c) and (f) of this Rule, the nature of the underlying case dictates the minimum time period that a file must be retained before it may be destroyed without client agreement. In addition, a lawyer may not destroy the files under paragraph (e) if the lawyer knows that there are legal or disciplinary proceedings pending or anticipated that relate to the matter for which the lawyer created the files, if the materials at issue are intrinsically valuable documents under paragraph (d), or if the lawyer has agreed otherwise. If the conditions imposed by this Rule are satisfied, the lawyer may destroy the files in a manner consistent with the lawyer's obligation to maintain the confidentiality of information relating to the representation under Rules 1.6 and 1.9 and other applicable law. A lawyer may destroy a client's file in accordance with this Rule notwithstanding the possibility that there could be further proceedings after the expiration of the time limits set forth in this Rule (such as a motion for a new trial or for relief from a judgment in

light of changes in the law or the discovery of additional evidence), so long as such proceedings are not pending or reasonably anticipated at the time of the destruction.

[8] The lawyer's obligations under this Rule to retain and return files to the client are not excused because the lawyer forwarded papers to the client from time to time during the course of the representation.

[9] Nothing in this Rule is intended to mandate that a lawyer destroy a file. A lawyer appropriately may decide to retain certain types or portions of files, or portions of files for longer than five years, such as files relating to a structured settlement or other matters creating long-term obligations to or by the client. Unless the lawyer and the client have otherwise agreed, a lawyer may retain a copy of the file or any document in the file.

Rule 1.16. Declining or terminating representation.
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(d) * The lawyer may retain papers relating to the client to the extent permitted by Rule 1.15A or other law.**

COMMENT
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Assisting the Client upon Withdrawal

[9] Even if the lawyer has been unfairly discharged by the client, a lawyer must take all reasonable steps to mitigate the consequences to the client. The lawyer may retain papers as security for a fee only to the extent permitted by ~~law. *See* Rule 1.15 and Wyo.Stat.Ann. § 29-9-102~~ Rule 1.15A or other law.

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INFORMATION ABOUT LEGAL SERVICES

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 ~~permitted by Rule 7.2~~. Whatever means are used to make known a lawyer's services, statements about them must be truthful.

[2] Misleading ~~T~~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 t~~here is~~ 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] ~~An advertisement~~ 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 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 misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit or misrepresentation. *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] 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, its retired members or its 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(d), 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. Advertising.

(a) ~~Subject to the requirements of Rules 7.1 and 7.3, a~~ A lawyer may ~~advertise services through written, recorded or electronic communication, including public~~ 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~~. 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~~.~~ ; 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.

~~(c)~~ (d) Any communication made pursuant to this Rule shall include the name and office address of at least one lawyer or law firm responsible for its content.

COMMENT

[1] ~~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.~~

~~[2]~~ 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.

~~[3] 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. But see Rule 7.3(a) for the prohibition against a solicitation through a real-time electronic exchange initiated by the lawyer.~~

~~[4] Neither this Rule nor Rule 7.3 prohibits communications authorized by law, such as notice to members of a class in class action litigation.~~

Paying Others to Recommend a Lawyer

~~[5]~~ [2] Except as permitted under paragraphs (b)(1)-(b)~~(4)~~(5), lawyers are not permitted to pay others for recommending the lawyer's services ~~or for channeling professional work in a manner that violates Rule 7.3~~. A communication contains a recommendation if it endorses or vouches for a lawyer's credentials, abilities, competence, character, or other professional qualities. ~~Paragraph (b)(1), however, 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 and website designers. 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).~~ 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. ~~Such~~ Qualified 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.)~~.

[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. ~~*See* Rule 5.3.~~ 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. ~~Nor could the lawyer allow in-person, telephonic, or real-time contacts that would violate Rule 7.3.~~

[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 ~~in-person,~~ live ~~telephone or real-time electronic~~ person-to-person contact ~~solicit professional employment~~ when a significant motive for the lawyer's doing so is the lawyer's or law firm's pecuniary gain, unless the ~~person contacted~~ contact is with a:

(1) ~~is a~~ lawyer; ~~or~~

(2) person who has a family, close personal, or prior 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.

~~(b)~~ (c) A lawyer shall not solicit professional employment ~~by written, recorded or electronic communication or by in-person, telephone or real-time electronic contact~~ even when not otherwise prohibited by paragraph ~~(a)~~ (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.

~~(c)~~ (d) ~~Every written, recorded or electronic communication from a lawyer soliciting 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 (a)(1) or (a)(2).~~ This Rule does not prohibit communications authorized by law or ordered by a court or other tribunal.

~~(d)~~ (e) Notwithstanding the prohibitions in ~~paragraph (a)~~ 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 ~~in-person or telephone contact to solicit memberships~~ 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.

COMMENT

[1] ~~A solicitation is a targeted communication initiated by 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~~. 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. ~~In contrast, a~~ A lawyer's communication ~~typically does not constitute~~ 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 ~~Internet~~ electronic searches.

[2] ~~There is a potential for abuse when a solicitation involves direct in-person, live telephone or real-time electronic contact by a lawyer with someone known to need legal services. These forms of contact subject a person to the private importuning of the trained advocate in a direct interpersonal encounter.~~ "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 ~~being retained immediately~~ an immediate response. The situation is fraught with the possibility of undue influence, intimidation, and over-reaching.

[3] ~~This~~ The potential for ~~abuse~~ overreaching inherent in ~~direct in-person, live telephone or real-time electronic solicitation~~ live person-to-person contact justifies its prohibition, particularly 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 ~~involve real-time contact and do not~~ violate other laws ~~governing solicitations~~. These forms of communications ~~and solicitations~~ 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 ~~direct in-person, telephone or real-time electronic~~ live person-to-person persuasion that may overwhelm a person's judgment.

[4] ~~The use of general advertising and written, recorded or electronic communications to transmit information from lawyer to the public, rather than direct in-person, live telephone or real-time electronic contact, will help to assure that the information flows cleanly as well as freely. The contents of advertisements and communications permitted under Rule 7.2 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 ~~direct in-person, live telephone or real-time electronic~~ 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 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 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. ~~Consequently, the general prohibition in Rule 7.3(a) and the requirements of Rule 7.3(c) are not applicable in those situations. Also, p~~Paragraph ~~(a)~~ (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] ~~But even permitted forms of solicitation can be abused. Thus, any~~ A solicitation which contains information which is false or misleading within the meaning of Rule 7.1, ~~which~~ that involves coercion, duress or harassment within the meaning of Rule 7.3~~(b)~~(c)(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 Rule 7.3~~(b)~~(c)(1) is prohibited. ~~Moreover, if after sending a letter or other communication to a client as permitted by Rule 7.2 the lawyer receives no response, any further effort to communicate with the recipient of the communication may violate the provisions of Rule 7.3(b).~~ 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 ~~is not intended to~~ 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] ~~The requirement in Rule 7.3(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.~~ 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 ~~(d)~~ (e) of this Rule permits a lawyer to participate with an organization which uses personal contact to ~~solicit~~ 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 ~~(d)~~ (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 or telephone~~ person-to-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~~ 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~~(b)~~(c). ~~*See* Rule 8.4(a).~~

~~Rule 7.4. Communication of fields of practice.~~

~~(a) A lawyer may communicate the fact that the lawyer does or does not practice in particular fields of law.~~

~~(b) A lawyer admitted to engage in patent practice before the United States Patent and Trademark Office may use the designation "Patent Attorney" or a substantially similar designation.~~

(c) A lawyer engaged in Admiralty practice may use the designation "Admiralty," "Proctor in Admiralty" or a substantially similar designation.

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

> **(1) the lawyer is certified as a specialist by an organization that has been approved by an appropriate state authority or that has been accredited by the American Bar Association; and**
>
> **(2) the name of the certifying organization is clearly identified in the communication.**

COMMENT

[1] Paragraph (a) of this Rule permits a lawyer to 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 Rule 7.1 to communications concerning a lawyer's services.

[2] Paragraph (b) recognizes the long established policy of the Patent and Trademark Office for the designation of lawyers practicing before the Office. Paragraph (c) recognizes that designation of Admiralty practice has a long historical tradition associated with maritime commerce and the federal courts.

[3] Paragraph (d) 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 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 that a lawyer has advanced knowledge and/or 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.

Rule 7.5. Firm names 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 if 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 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.~~

~~[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.~~

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