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## MEMORANDUM

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**TO:** IOWA SUPREME COURT COMMITTEE TO STUDY LAWYER ADVERTISING RULES  
**FROM:** TRINITY BRAUN-ARANA, STAFF MEMBER  
**SUBJECT:** APPROACH TO LAWYER ADVERTISING TAKEN BY IOWA'S SURROUNDING STATES  
**DATE:** 7/1/2011

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This memo is intended to provide an overview of the approach to attorney advertising currently being taken by the following states: Illinois, Minnesota, Missouri, Nebraska, South Dakota, and Wisconsin.

The attachments to this memo have been compiled from information laboriously prepared by the ABA, all of which is available at:

[http://www.americanbar.org/groups/professional\\_responsibility/resources/professionalism/professionalism\\_ethics\\_in\\_lawyer\\_advertising.html](http://www.americanbar.org/groups/professional_responsibility/resources/professionalism/professionalism_ethics_in_lawyer_advertising.html)

All states but California have adopted some variation of the Model Rules of Professional Conduct. Most states have provisions within their rules applying to lawyer advertising which are distinct from the provisions of the Model Rules. In some states (Alabama, Arizona, Connecticut, New Mexico, Louisiana, Ohio), bar associations also address the advertising/marketing/client development issue in their Civility Code, using some variation of the phrase: "I will be mindful of the need to protect the image of the legal profession in the eyes of the public and will be so guided when considering methods and content of advertising".

At a glance...

**ILLINOIS-** Follows the Model Rules with respect to 7.1, 7.3, and 7.5. Rules are substantially similar with respect to 7.2. With respect to 7.4, their Rule reflects the fact that Illinois does not recognize certifications of specialties in the practice, or certifications of expertise by agencies or groups.

**MINNESOTA-** Some word changes, but Minnesota's Rules are virtually identical to the Model Rules.

**MISSOURI-** Rules are significantly different from the Model Rules, both as to wording and content. All of the rules appear to be more specific as to what will constitute an infraction and what precisely is required of the attorney. There is also cross-referencing to their ethics provisions outside the advertising rules. Neither the Bar nor the Supreme Court of Missouri reviews or approves certifying organizations or specialist designations.

**NEBRASKA-** Follows the Model Rules with respect to 7.1, 7.2, 7.4. Their corollary to Model Rules 7.3 and 7.5 are slightly more detailed than the Model Rules. Nebraska allows attorneys to use tradenames if certain requirements are met, and references this in their advertising rules.

**SOUTH DAKOTA-** Rules are significantly different from the Model Rules, both as to wording and content. All of the rules appear to be more specific as to what will constitute an infraction and what precisely is required of the attorney. The Supreme Court of SD allows attorneys to advertise specialties, specifically designates the American Bar Association as the appropriate regulatory authority to accredit specialty certification programs.

**WISCONSIN-** Follows the current Model Rules as to 7.2, 7.3, 7.5, with some minor additions. Follows the former Model Rules as to 7.1 and 7.4.

# Attachment 1

## Comparison with the ABA Model Rules

## ABA Model 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.

<b>Illinois</b>	Same as MR (effective 1/1/2010)
<b>Minnesota</b>	Same as MR (effective 10/1/2005)
<b>Missouri</b>	<p>Deletes "or misleading;"</p> <p>Replaces language after "fact of law" with:</p> <p>A communication is misleading if it:</p> <ul style="list-style-type: none"> <li>(a) omits a fact as a result of which the statement considered as a whole is materially misleading;</li> <li>(b) is likely to create an unjustified expectation about results the lawyer can achieve;</li> <li>(c) proclaims results obtained on behalf of clients, such as the amount of a damage award or the lawyer's record in obtaining favorable verdicts or settlements, without stating that past results afford no guarantee of future results and that every case is different and must be judged on its own merits;</li> <li>(d) states or implies that the lawyer can achieve results by means that violate the Rules of Professional Conduct or other law;</li> <li>(e) compares the quality of a lawyer's or a law firm's services with other lawyers' services, unless the comparison can be factually substantiated;</li> <li>(f) advertises for a specific type of case concerning which the lawyer has neither experience nor competence;</li> <li>(g) indicates an area of practice in which the lawyer routinely refers matters to other lawyers, without conspicuous identification of such fact;</li> <li>(h) contains any paid testimonial about or endorsement of the lawyer, without conspicuous identification of the fact that payment has been made for the testimonial or endorsement;</li> <li>(i) contains any simulated portrayal of a lawyer, client, victim, scene, or event without conspicuous identification of the fact that it is a simulation;</li> <li>(j) provides an office address for an office staffed only part-time or by appointment only, without conspicuous identification of such fact; or</li> <li>(k) states that legal services are available on a contingent or no-recovery-no fee basis without stating conspicuously that the client may be responsible for costs or expenses, if that is the case.</li> </ul> <p>The presumptions that statements are misleading contained in Rule 4-7.1(c), (g), (h), and (k) shall not apply to a not-for-profit organization funded in whole or in part by the Legal Services Corporation established by 42 U.S.C. section 2996(b) or to pro bono services provided free of charge by a not-forprofit organization, a court-annexed program, a bar association, or an accredited law school. (effective 7/1/2010)</p>
<b>Nebraska</b>	Same as MR (effective 9/1/2005)

**South Dakota**

**Rule 7.1. Communications Concerning a Lawyer's Services.**

**(a) Definitions.**

For the purpose of this Rule 7.1, the following terms shall have the following meanings:

(1) "communication" means any message or offer made by or on behalf of a lawyer concerning the availability of the lawyer for professional employment which is directed to any former, present, or prospective client, including, but not limited to, the following:

(i) any use of firm name, trade name, fictitious name, or other professional designation of such lawyer;

(ii) any stationery, letterhead, business card, sign, brochure, or other comparable written material describing such lawyer;

(iii) any advertisement, regardless of medium, of such lawyer, directed to the general public or any significant portion thereof; or

(iv) any unsolicited correspondence from a lawyer directed to any person or entity; and

(2) "lawyer" means an individual lawyer and any association of lawyers for the practice of law, including a partnership, a professional corporation, limited liability company or any other association.

**(b) Purpose of Communications.**

All communications shall be predominantly informational. As used in this Rule 7.1, "predominantly informational" means that, in both quantity and quality, the communication of factual information rationally related to the need for and selection of a lawyer predominates and that the communication includes only a minimal amount of content designed to attract attention to and create interest in the communication.

**(c) False or Misleading Communications.**

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 communication considered as a whole not materially misleading;

(2) contains a prediction, warranty or guarantee regarding the future success of representation by the lawyer or is likely to create an unjustified expectation about results the lawyer can achieve;

(3) contains an opinion, representation, implication or self-laudatory statement regarding the quality of the lawyer's legal services which is not susceptible of reasonable verification by the public;

(4) contains information based on the lawyer's past success without a disclaimer that past success cannot be an assurance of future success because each case must be decided on its own merits;

(5) compares the lawyer's services with other lawyers' services, unless the comparison can be factually substantiated;

(6) states or implies that the lawyer actually represents clients in a particular area of practice when the lawyer refers a significant number of such clients to other lawyers for representation with respect to all or a significant aspect of the particular practice area;

<p><b>SD (cont.)</b></p>	<p>(7) states or implies that the lawyer is experienced in a particular area of practice unless significant experience in such practice area can be factually substantiated;</p> <p>(8) states or implies that the lawyer is in a position to improperly influence any court or other public body or office;</p> <p>(9) states or implies the existence of a relationship between the lawyer and a government agency or instrumentality;</p> <p>(10) states or implies that a lawyer has a relationship to any other lawyer unless such relationship in fact exists and is close, personal, continuous and regular;</p> <p>(11) fails to contain the name and address by city or town of the lawyer whose services are described in the communication;</p> <p>(12) contains a testimonial about or endorsement of the lawyer, unless the lawyer can factually substantiate the claims made in the testimonial or endorsement and unless such communication also contains an express disclaimer substantively similar to the following: "This testimonial or endorsement does not constitute a guaranty, warranty, or prediction regarding the outcome of your legal matter";</p> <p>(13) contains a testimonial or endorsement about the lawyer for which the lawyer has directly or indirectly given or exchanged anything of value to or with the person making the testimonial or giving the endorsement, unless the communication conspicuously discloses that the lawyer has given or exchanged something of value to or with the person making the testimonial or giving the endorsement;</p> <p>(14) contains a testimonial or endorsement which is not made by an actual client of the lawyer, unless that fact is conspicuously disclosed in the communication;</p> <p>(15) contains any impersonation, dramatization, or simulation which is not predominantly informational and without conspicuously disclosing in the communication the fact that it is an impersonation, dramatization, or simulation;</p> <p>(16) fails to contain disclaimers or disclosures required by this Rule 7.1 or the other Rules of Professional Conduct;</p> <p>(17) contains any other material statement or claim that cannot be factually substantiated.</p> <p>(d) Lawyers Responsible for Communication.</p> <p>Every lawyer associated in the practice of law with or employed by the lawyer which causes or makes a communication in violation of this rule may be subject to discipline for the failure of the communication to comply with the requirements of this rule. (effective 1/1/2004)</p>
<p><b>Wisconsin</b></p>	<p>Has former MR</p> <p>[former MR 7.1 and Wisconsin SCR 20:7.1 :</p> <p>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:</p> <p>(a) contains a material misrepresentation of fact or law, or omits a fact necessary to make the statement considered as a whole not materially misleading;</p> <p>(b) is likely to create an unjustified expectation about results the lawyer can achieve, or states or implies that the lawyer can achieve results by means that violate the Rules of Professional Conduct or other law; or</p> <p>(c) compares the lawyer's services with other lawyers' services, unless the comparison can be factually substantiated; or</p> <p>(d) contains any paid testimonial about, or paid endorsement of, the lawyer without identifying the fact that payment has been made or, if the testimonial or endorsement is not made by an actual client, without identifying that fact.]</p> <p>Adds (d) contains any paid testimonial about, or paid endorsement of, the lawyer without identifying the fact that payment has been made or, if the testimonial or endorsement is not made by an actual client, without identifying that fact. (effective 7/1/2007)</p>

\* variations as of 10-21-2010

## ABA Model Rule 7.2 : Advertising

- (a) Subject to the requirements of Rules 7.1 and 7.3, a lawyer may advertise services through written, recorded or electronic communication, including public media.
- (b) A lawyer shall not give 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.
- (c) 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.

<b>Illinois</b>	(2) Deletes "or qualified" after not-for-profit; deletes second sentence, "A qualified lawyer...regulatory authority;" (4)(c) Capitalizes "Rule." (effective 1/1/2010)
<b>Minnesota</b>	(b)(2): deletes "or qualified" and deletes definition of qualified lawyer referral service. (c): deletes "and office address" (effective 10/1/2005)
<b>Missouri</b>	(a) Deletes reference to Rule 7.3 and replaces language after "services through" with: "public media, such as a telephone directory, legal directory, newspaper or other periodical, outdoor advertising, radio, or television, or through direct mail advertising distributed generally to persons not known to need legal services of the kind provided by the lawyer in a particular matter;" Adds: (b) A copy or recording of an advertisement or written communication shall be kept for two years after its last dissemination along with a record of when and where it was used. The record shall include the name of at least one lawyer responsible for its content unless the advertisement or written communication itself contains the name of at least one lawyer responsible for its content. (c) is similar to MR (b); (c)(1) is similar to MR (b)(1) but changes "costs" to "cost," adds "written" before "communication;" Replaces (b)(2) through (4) with: (2) a lawyer may pay the reasonable cost of advertising, written communication, or other notification required in connection with the sale of a law practice as permitted by Rule 4-1.17; and (3) a lawyer may pay the usual charges of a qualified lawyer referral service registered under Rule 4-9.1 or other not-for-profit legal services organization.

<b>MO (cont.)</b>	<p>Adds: (d) A lawyer may not, directly or indirectly, pay all or a part of the cost of an advertisement in the public media unless such advertisement discloses the name and address of the financing lawyer, the relationship between the advertising lawyer and the financing lawyer, and whether the advertising lawyer is likely to refer cases received through the advertisement to the financing lawyer. Similarly, in any communications such as television, radio, or other electronic programs purporting to give the public legal advice or legal information, for which programs the broadcaster receives any remuneration or other consideration, directly or indirectly, from the lawyer who appears on those programs, the lawyer shall conspicuously disclose to the public the fact that the broadcaster has been paid or receives consideration from the lawyer appearing on the program.</p> <p>(e) A lawyer or law firm shall not advertise the existence of any office other than the principal office unless:</p> <p>(1) that other office is staffed by a lawyer at least three days a week, or</p> <p>(2) the advertisement states: (A) the days and times during which a lawyer will be present at that office, or (B) that meetings with lawyers will be by appointment only.</p> <p>(f) Any advertisement or communication made pursuant to this Rule 4-7.2, other than written solicitations governed by the disclosure rules of Rule 4-7.3(b), shall contain the following conspicuous disclosure: "The choice of a lawyer is an important decision and should not be based solely upon advertisements." "Conspicuous" means that the required disclosure must be of such size, color, contrast, location, duration, cadence, or audibility that an ordinary person can readily notice, read, hear, or understand it.</p> <p>(g) The disclosures required by Rule 4-7.2(e) and (f) need not be made if the information communicated is limited to the following: (1) the name of the law firm and the names of lawyers in the firm; (2) one or more fields of law in which the lawyer or law firm practices; (3) the date and place of admission to the bar of state and federal courts; and (4) the address, including e-mail and web site address, telephone number, and office hours.</p> <p>(h) Any words or statements required by Rules 4-7.1, 4-7.2, or 4-7.3 to appear in an advertisement or direct mail communication must appear in the same language in which the advertisement or direct mail solicitation appears. If more than one language is used in an advertisement or direct mail communication, any words or statements required by Rules 4-7.1 to 4-7.6 must appear in each language used in the advertisement or direct mail communication.</p> <p>(i) The provisions of Rule 4-7.2 shall not apply to services provided by a notfor-profit organization funded in whole or in part by the Legal Services Corporation established by 42 U.S.C. section 2996(b) or to pro bono services provided free of charge by a not-for-profit organization, a court-annexed program, a bar association, or an accredited law school. The provisions of Rule 4-7.2 shall not apply to law firms or lawyers who promote, support or publicize through advertising that substantially and predominantly features any of the following: legal services corporation; community or other non-profit organization; recognized community events or celebrations; institutions; entities; or individuals other than themselves.</p> <p>Does not adopt MR (c). (effective 7/1/2010)</p>
<b>Nebraska</b>	Same as MR (effective 9/1/2005)

**South Dakota**

Rule 7.2. Advertising.

(a) Definition.

"Lawyer" is defined in Rule 7.1(a)(2).

(b) Permitted Advertising.

Subject to the requirements of Rules 7.1 and 7.3, 7.4 and 7.5, a lawyer may advertise legal services through written, recorded, internet, computer, e-mail or other electronic communication, including public media, such as a telephone directory, legal directory, newspapers or other periodicals, billboards and other signs, radio, television and other electronic media, and recorded messages the public may access by dialing a telephone number, or through other written or recorded communication. This rule shall not apply to any advertisement which is broadcast or disseminated in another jurisdiction in which the advertising lawyer is admitted if such advertisement complies with the rules governing lawyer advertising in that jurisdiction and is reasonably expected by the lawyer not to be received or disseminated in the State of South Dakota.

(c) Record of Advertising.

A copy or recording of an advertisement shall be kept by the advertising lawyer for two years after its last dissemination along with a record of when and where it was used.

(d) Prohibited Payments.

Except as provided in Rule 1.17 and except as provided in subparagraph (c)(13) of Rule 7.1, a lawyer shall not give 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 and may pay the usual charges of a not-for-profit legal service organization;
- (2) pay the usual charges of a not-for-profit 501(c)(3) or 501(c)(6) 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.

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.

(e) Prohibited Cost Sharing.

No lawyer shall, directly or indirectly, pay all or part of the cost of an advertisement by another lawyer with whom the nonadvertising lawyer is not associated in a partnership, professional corporation or limited liability company for the practice of law, unless the advertisement conspicuously discloses the name and address of the nonadvertising lawyer, and conspicuously discloses whether the advertising lawyer contemplates referring all or any part of the representation of a client obtained through the advertisement to the nonadvertising lawyer.

(f) Permissible Content. The following information in advertisements and written communications shall be presumed not to violate the provisions of this Rule 7.2:

- (1) Subject to the requirements of Rule 7.5, the name of the lawyer, a listing of lawyers associated with the lawyer for the practice of law, office addresses and telephone numbers, office and telephone service hours, and a designation such as "lawyer," "attorney," "law firm," "partnership" or "professional corporation," or "limited liability company."
- (2) Date of admission to the South Dakota bar and any other bar association and a listing of federal courts and jurisdictions where the lawyer is licensed to practice.
- (3) Technical and professional licenses granted by the State of South Dakota or other recognized licensing authorities.
- (4) Foreign language ability.

**SD (cont.)**

- (5) Fields of law in which the lawyer is certified subject to the requirements of Rule 7.4.
- (6) Prepaid or group legal service plans in which the lawyer participates.
- (7) Acceptance of credit cards.
- (8) Information concerning fees and costs, or the availability of such information on request, subject to the requirements of this Rule 7.2 and the other Rules of Professional Conduct.
- (9) A listing of the name and geographic location of a lawyer as a sponsor of a public service announcement or charitable, civic or community program or event. Such listings shall not exceed the traditional description of sponsors of or contributors to the charitable, civic or community program or event or public service announcement, and such listing must comply with the provisions of this rule and the other Rules of Professional Conduct.
- (10) Schools attended, with dates of graduation, degree and other scholastic distinctions.
- (11) Public or quasi-public offices.
- (12) Military service.
- (13) Legal authorships.
- (14) Legal teaching positions.
- (15) Memberships, offices and committee assignments in bar associations.
- (16) Memberships and offices in legal fraternities and legal societies.
- (17) Memberships in scientific, technical and professional associations and societies.
- (18) Names and addresses of bank references.
- (19) With their written consent, names of clients regularly represented.
- (20) Office and telephone answering service hours.
- (g) Permissible Fee Information.
  - (1) Advertisements permitted under this Rule 7.2 may contain information about fees for services as follows:
    - (i) the fee charged for an initial consultation;
    - (ii) availability upon request of a written schedule of fees or an estimate of fees to be charged for specific legal services;
    - (iii) that the charging of a fee is contingent on outcome or that the fee will be a percentage of the recovery, provided that the advertisement conspicuously discloses whether percentages are computed before or after deduction of costs, and only if it specifically and conspicuously states that the client will bear the expenses incurred in the client's representation, regardless of outcome, except as permitted by Rule 1.8(e);
    - (iv) the range of fees for services, provided that the advertisement conspicuously discloses that the specific fee within the range which will be charged will vary depending upon the particular matter to be handled for each client, that the quoted fee will be available only to clients whose legal representation is within the services described in the advertisement, and the client is entitled without obligation to an estimate of the fee within the range likely to be charged;
    - (v) the hourly rate, provided that the advertisement conspicuously discloses that the total fee charge will depend upon the number of hours which must be devoted to the particular matter to be handled for each client, and that the client is entitled without obligation to an estimate of the fee likely to be charged;

<b>SD (cont.)</b>	<p>(vi) fixed fees for specific legal services, provided that the advertisement conspicuously discloses that the quoted fee will be available only to a client seeking the specific services described.</p> <p>(2) A lawyer who advertises a specific fee, range of fees or hourly rate for a particular service shall honor the advertised fee or rate for at least ninety (90) days unless the advertisement conspicuously specifies a shorter period; provided, for advertisements in the yellow pages of telephone directories or other media not published more frequently than annually, the advertised fee or range of fees shall be honored for no less than one year following publication.</p> <p>(h) Electronic Media. Advertisements by electronic media, such as television and radio, may contain the same information as permitted in advertisements by print media, subject to the following requirements:</p> <p>(1) if a lawyer advertises by electronic media and a person appears in the advertisement purporting to be a lawyer, such person shall in fact be the advertising lawyer or a lawyer employed full-time by the advertising lawyer; and</p> <p>(2) if a lawyer advertises a particular legal service by electronic media, and a person appears in the advertisement purporting to be or implying that the person is the lawyer who will render the legal service, the person appearing in the advertisement shall be the lawyer who will actually perform the legal service advertised unless the advertisement conspicuously discloses that the person appearing in the advertisement is not the person who will perform the legal service advertised.</p> <p>(3) Advertisements disseminated by electronic media shall be prerecorded and the prerecorded communication shall be reviewed and approved by the lawyer before it is broadcast.</p> <p>(i) Law Directories. Nothing in this Rule 7.2 prohibits a lawyer from permitting the inclusion in reputable directories intended primarily for the use of the legal profession or institutional consumers of legal services and contains such information as has traditionally been included in such publications.</p> <p>(j) Acceptance of Employment. A lawyer shall not accept employment when he knows or should know that the person who seeks his services does so as a result of conduct prohibited under this Rule 7.2.</p> <p>(k) Lawyers Responsible for Advertising. Every lawyer associated in the practice of law with or employed by the lawyer which causes or makes an advertising in violation of this rule may be subject to discipline for the failure of the advertisement to comply with the requirements of this rule.</p> <p>(l) Mandatory Disclosure. Every lawyer shall, in any written or media advertisements, disclose the absence of professional liability insurance if the lawyer does not have professional liability insurance having limits of at least \$100,000, using the specific language required in Rule 1.4(c)(1) or (2). (effective 1/1/2004)</p>
<b>Wisconsin</b>	<p>(b)(4)(ii) the client gives informed consent;</p> <p>Adds (b)(4)(iii) there is no interference with the lawyer's independence of professional judgment or with the client-lawyer relationship; and</p> <p>Adds (b)(4)(iv) information relating to representation of a client is protected as required by SCR 20:1.6. (effective 7/1/2007)</p>

\* variations as of 02-14-2011

## ABA Model Rule 7.3 : Direct Contact with Prospective Clients

(a) A lawyer shall not by in-person, live telephone or real-time electronic contact solicit professional employment from a prospective client when a significant motive for the lawyer's doing so is the lawyer's pecuniary gain, unless the person contacted:

- (1) is a lawyer; or
- (2) has a family, close personal, or prior professional relationship with the lawyer.

(b) A lawyer shall not solicit professional employment from a prospective client by written, recorded or electronic communication or by in-person, telephone or real-time electronic contact even when not otherwise prohibited by paragraph (a), if:

- (1) the prospective client 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) Every written, recorded or electronic communication from a lawyer soliciting professional employment from a prospective client 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).

(d) Notwithstanding the prohibitions in paragraph (a), 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 or subscriptions for the plan from persons who are not known to need legal services in a particular matter covered by the plan.

<b>Illinois</b>	Same as MR (effective 1/1/2010)
<b>Minnesota</b>	(a) and (b): does not include reference to "real time electronic" (c): requires the words to be included "clearly and conspicuously"; replaces "at the beginning and ending of any recorded.." with, "within any written, recorded..." (effective 10/1/2005)
<b>Missouri</b>	4-7.3 DIRECT CONTACT WITH PROSPECTIVE CLIENTS This Rule 4-7.3 applies to in-person and written solicitations by a lawyer with persons known to need legal services of the kind provided by the lawyer in a particular matter for the purpose of obtaining professional employment. (a) In-person solicitation. A lawyer may not initiate the in-person, telephone, or real time electronic solicitation of legal business under any circumstance, other than with an existing or former client, lawyer, close friend, or relative. (b) Written Solicitation. A lawyer may initiate written solicitations to an existing or former client, lawyer, friend, or relative without complying with the requirements of this Rule 4-7.3(b). Written solicitations to others are subject to the following requirements: (1) any written solicitation by mail shall be plainly marked "ADVERTISEMENT" on the face of the envelope and all written solicitations shall be plainly marked "ADVERTISEMENT" at the top of the first page in type at least as large as the largest written type used in the written solicitation; (2) the lawyer shall retain a copy of each such written solicitation for two years. If written identical solicitations are sent to two or more prospective clients, the lawyer may comply with this requirement by retaining a single copy together with a list of the names and addresses of persons to whom the written solicitation was sent;

<p><b>MO (cont.)</b></p>	<p>(3) each written solicitation must include the following: "Disregard this solicitation if you have already engaged a lawyer in connection with the legal matter referred to in this solicitation. You may wish to consult your lawyer or another lawyer instead of me (us). The exact nature of your legal situation will depend on many facts not known to me (us) at this time. You should understand that the advice and information in this solicitation is general and that your own situation may vary. This statement is required by rule of the Supreme Court of Missouri.;"</p> <p>(4) written solicitations mailed to prospective clients shall be sent only by regular United States mail, not registered mail or other forms of restricted or certified delivery;</p> <p>(5) written solicitations mailed to prospective clients shall not be made to resemble legal pleadings or other legal documents;</p> <p>(6) any written solicitation prompted by a specific occurrence involving or affecting the intended recipient of the solicitation or family member shall disclose how the lawyer obtained the information prompting the solicitation;</p> <p>(7) a written solicitation seeking employment by a specific prospective client in a specific matter shall not reveal on the envelope or on the outside of a selfmailing brochure or pamphlet the nature of the client's legal problem;</p> <p>(8) if a lawyer knows that a lawyer other than the lawyer whose name or signature appears on the solicitation will actually handle the case or matter or that the case or matter will be referred to another lawyer or law firm, any written solicitation concerning a specific matter shall include a statement so advising the potential client; and</p> <p>(9) a lawyer shall not send a written solicitation regarding a specific matter if the lawyer knows or reasonably should know that the person to whom the solicitation is directed is represented by a lawyer in the matter.</p> <p>(c) A lawyer shall not send, nor knowingly permit to be sent, on behalf of the lawyer, the lawyer's firm, the lawyer's partner, an associate, or any other lawyer affiliated with the lawyer or the lawyer's firm a written solicitation to any prospective client for the purpose of obtaining professional employment if:</p> <p>(1) it has been made known to the lawyer that the person does not want to receive such solicitations from the lawyer; (2) the written solicitation involves coercion, duress, fraud, overreaching, harassment, intimidation, or undue influence; (3) the written solicitation contains a false, fraudulent, misleading, or deceptive statement or claim or makes claims as to the comparative quality of legal services, unless the comparison can be factually substantiated, or asserts opinions about the liability of the defendant or offers assurances of client satisfaction; (4) the written solicitation concerns an action for personal injury or wrongful death or otherwise relates to an accident or disaster involving the person solicited or a relative of that person if the accident or disaster occurred less than 30 days prior to the solicitation or if the lawyer knows or reasonably should know that the physical, emotional, or mental state of the person solicited makes it unlikely that the person would exercise reasonable judgment in employing a lawyer; or (5) the written solicitation vilifies, denounces or disparages any other potential party.</p> <p>(d) The provisions of Rule 4-7.3 shall not apply to services provided by a not for-profit organization funded in whole or in part by the Legal Services Corporation established by 42 U.S.C. Section 2996(b) or to pro bono services provided free of charge by a not-for-profit organization, a court-annexed program, a bar association, or an accredited law school. (effective 7/1/2007)</p>
<p><b>Nebraska</b></p>	<p>amends (c) slightly: deletes the words "known to be in need of legal services in a particular matter"; and replaces "Advertising Material" with "This is an Advertisement."; adds at the end of (c): "This is an advertisement" shall appear in type size at least as large as the print of the address and shall be located in a conspicuous place on the envelope or postcard. (effective 9/1/2005)</p>
<p><b>South Dakota</b></p>	<p>(d): adds at the end: Where the communication is written, the label shall appear in a minimum 18-point type or in type as large as the largest type otherwise used in the written communication, whichever is larger. This labeling requirement shall not apply to mailings of announcements of changes in address, firm structure or personnel, nor to mailings of firm brochures to persons selected on a basis other than prospective employment. (effective 1/1/2004)</p>

<b>Wisconsin</b>	Adds (b)(1) the lawyer knows or reasonably should know that the physical, emotional or mental state of the person makes it unlikely that the person would exercise reasonable judgment in employing a lawyer; or (b)(2) and (3): same as MR (b)(1) and (2) (c): adds "printed" before second instance of "recorded" and "and a copy of it shall be filed with the office of lawyer regulation within five days of its dissemination" to end Adds (e) Except as permitted under SCR 11.06, a lawyer, at his or her instance, shall not draft legal documents, such as wills, trust instruments or contracts, which require or imply that the lawyer's services be used in relation to that document. (effective 7/1/2007)
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\* variations as of 05-24-2011

## ABA Model Rule 7.4 : Communication of Fields of Practice and Specialization

- (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 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 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.

<b>Illinois</b>	<p>(b) Adds at beginning of paragraph, "The Supreme Court of Illinois does not recognize certifications of specialties in the practice of law, nor does it recognize certifications of expertise in any phase of the practice of law by any agency, governmental or private, or by any group, organization or association;"</p> <p>Deletes (c) and (d);</p> <p>Adds paragraph (c): "Except when identifying certificates, awards or recognitions issued to him or her by an agency or organization, a lawyer may not use the terms "certified," "specialist," "expert," or any other, similar terms to describe his qualifications as a lawyer or his qualifications in any subspecialty of the law. If such terms are used to identify any certificates, awards or recognitions issued by any agency, governmental or private, or by any group, organization or association, the reference must meet the following requirements:</p> <p>(1) the reference must be truthful and verifiable and may not be misleading in violation of Rule 7.1;</p> <p>(2) the reference must state that the Supreme Court of Illinois does not recognize certifications of specialties in the practice of law and that the certificate, award or recognition is not a requirement to practice law in Illinois." (effective 1/1/2010)</p>
<b>Minnesota</b>	(c): replaces "has been" with "is" (effective 10/1/2005)
<b>Missouri</b>	<p>First paragraph is similar to MR (a) but adds: "Any such communication shall conform to the requirements of Rule 4-7.1. Except as provided in Rule 4-7.4(a) and (b), a lawyer shall not state or imply that the lawyer is a specialist unless the communication contains a disclaimer that neither the Supreme Court of Missouri nor The Missouri Bar reviews or approves certifying organizations or specialist designations;"</p> <p>Does not adopt (d). (effective 7/1/2007)</p>
<b>Nebraska</b>	Same as MR (effective 9/1/2005)

<b>South Dakota</b>	<p>Replaces MR (a) with an introductory section. The first sentence of the introduction is the same as MR (a). It then adds: If a lawyer practices only in certain fields, or will not accept matters except in such fields, the lawyer is permitted so to indicate. A lawyer shall not state or imply that the lawyer is a specialist except as follows:</p> <p>(a) is the same as MR (b)  (b) is the same as MR (c)  adds as (c): If a lawyer or firm practices in only certain fields and desires to advertise such limitations in the yellow pages of the telephone directory any such advertising must be accompanied by the following disclaimer appearing in a prominent and conspicuous manner in such advertising or on the same page as the advertising: (1) Such certification is granted by an organization which has been approved by the appropriate regulatory authority to grant such certification; or (2) Such certification is granted by an organization that has not yet been approved by, or has been denied the approval available from the appropriate regulatory authority, and the absence or denial of approval is clearly stated in the communication, and in any advertising subject to Rule 7.2, such statement appears in the same sentence that communicates the certification.  adds as (d): Pursuant to subsection (c)(1), the South Dakota Supreme Court hereby designates the American Bar Association as the appropriate regulatory authority to accredit specialty certification programs according to such standards and criteria as the American Bar Association may from time to time establish for accreditation of specialty programs.  (e) is the same as MR (d) (effective 1/1/2004)</p>
<b>Wisconsin</b>	<p>Title: has former MR  [former MR 7.4 and Wisconsin SCR 20:7.4 :</p> <p>(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 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 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.]  (effective 7/1/2007)</p>

\* variations as of 10-21-2010

## ABA Model 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 when that is the fact.

<b>Illinois</b>	Same as MR (effective 1/1/2010)
<b>Minnesota</b>	Same as MR (effective 10/1/2005)
<b>Missouri</b>	Same as MR (effective 7/1/2007)
<b>Nebraska</b>	replaces (a) with: (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: (1) the trade name includes the name of at least one of the lawyers practicing under said name. A law firm consisting solely of the name or names of deceased or retired members of the firm does not have to include the name of an active member of the firm; (2) the trade name does not imply a connection with a government entity, with a public or charitable legal services organization or any other organization, association or institution or entity, unless there is, in fact, a connection; and (3) the trade name is not otherwise in violation of Rule 7.1. (effective 9/1/2005)
<b>South Dakota</b>	adds as (e): The disclosure required in Rule 1.4(c)(1) or (2) shall be in black ink with type no smaller than the type used for showing the individual lawyer's names. (effective 1/1/2004)
<b>Wisconsin</b>	Same as MR (effective 7/1/2007)

\* variations as of 10-21-2010

# Attachment 2

## Current Attorney Advertising Rules in Effect by State

Illinois

M.R. 3140

**IN THE  
SUPREME COURT  
OF  
THE STATE OF ILLINOIS**

Order entered July 1, 2009.

Effective January 1, 2010, the provisions of the Illinois Rules of Professional Conduct will be repealed and replaced by the following Illinois Rules of Professional Conduct of 2010.

**ARTICLE VIII. ILLINOIS RULES OF PROFESSIONAL CONDUCT  
OF 2010**

**Preamble: a Lawyer's Responsibilities**

[1] A lawyer, as a member of the legal profession, is a representative of clients, an officer of the legal system and a public citizen having special responsibility for the quality of justice.

[2] As a representative of clients, a lawyer performs various functions. As advisor, a lawyer provides a client with an informed understanding of the client's legal rights and obligations and explains their practical implications. As advocate, a lawyer zealously asserts the client's position under the rules of the adversary system. As negotiator, a lawyer seeks a result advantageous to the client but consistent with requirements of honest dealings with others. As an evaluator, a lawyer acts by examining a client's legal affairs and reporting about them to the client or to others.

[3] In addition to these representational functions, a lawyer may serve as a third-party neutral, a nonrepresentational role helping the parties to resolve a dispute or other matter. Some of these Rules apply directly to lawyers who are or have served as third-party neutrals. See, *e.g.*, Rules 1.12 and 2.4. In addition, there are Rules that apply to lawyers who are not active in the practice of law or to practicing lawyers even when they are acting in a nonprofessional capacity. For example, a lawyer who commits fraud in the conduct of a business is subject to discipline for engaging in conduct involving dishonesty, fraud, deceit or misrepresentation. See Rule 8.4.

[4] In all professional functions a lawyer should be competent, prompt and diligent. A lawyer should maintain communication with a client concerning the

conflicts of interest with other matters being handled by the lawyer's firm, paragraph (b) provides that Rule 1.10 is inapplicable to a representation governed by this Rule except as provided by paragraph (a)(2). Paragraph (a)(2) requires the participating lawyer to comply with Rule 1.10 when the lawyer knows that the lawyer's firm is disqualified by Rules 1.7 or 1.9(a). By virtue of paragraph (b), however, a lawyer's participation in a short-term limited legal services program will not preclude the lawyer's firm from undertaking or continuing the representation of a client with interests adverse to a client being represented under the program's auspices. Nor will the personal disqualification of a lawyer participating in the program be imputed to other lawyers participating in the program.

[5] If, after commencing a short-term limited representation in accordance with this Rule, a lawyer undertakes to represent the client in the matter on an ongoing basis, Rules 1.7, 1.9(a) and 1.10 become applicable.

Adopted July 1, 2009, effective January 1, 2010.

#### **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.

Adopted July 1, 2009, effective January 1, 2010.

#### **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] 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 a prospective client.

[4] 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.

Adopted July 1, 2009, effective January 1, 2010.

#### **RULE 7.2: ADVERTISING**

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

(b) A lawyer shall not give 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 lawyer referral service;

(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.

(c) 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.

Adopted July 1, 2009, effective January 1, 2010.

## **Comment**

[1] 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 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 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 advertising, against advertising going beyond specified facts about a lawyer, or against "undignified" advertising. Television is now one of the most powerful media for getting information to the public, particularly persons of low and moderate income; prohibiting television 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. Similarly, electronic media, such as the Internet, can be an important source of information about legal services, and lawful communication by electronic mail is permitted by this Rule. But see Rule 7.3(a) for the prohibition against the solicitation of a prospective client through a real-time electronic exchange that is not initiated by the prospective client.

[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] Lawyers are not permitted to pay others for channeling professional work. 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, 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. 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.

[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 prospective clients 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 laypersons 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 lawyer 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 prospective clients, 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 prospective clients 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.

Adopted July 1, 2009, effective January 1, 2010.

### **RULE 7.3: DIRECT CONTACT WITH PROSPECTIVE CLIENTS**

(a) A lawyer shall not by in-person, live telephone or real-time electronic contact solicit professional employment from a prospective client when a significant motive for the lawyer's doing so is the lawyer's pecuniary gain, unless the person contacted:

(1) is a lawyer; or

(2) has a family, close personal, or prior professional relationship with the lawyer.

(b) A lawyer shall not solicit professional employment from a prospective client by written, recorded or electronic communication or by in-person, telephone or real-time electronic contact even when not otherwise prohibited by paragraph (a), if:

(1) the prospective client 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) Every written, recorded or electronic communication from a lawyer soliciting professional employment from a prospective client 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).

(d) Notwithstanding the prohibitions in paragraph (a), 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 or subscriptions for the plan from persons who are not known to need legal services in a particular matter covered by the plan.

Adopted July 1, 2009, effective January 1, 2010.

#### **Comment**

[1] There is a potential for abuse inherent in direct in-person, live telephone or real-time electronic contact by a lawyer with a prospective client known to need legal services. These forms of contact between a lawyer and a prospective client subject the layperson to the private importuning of the trained advocate in a direct interpersonal encounter. The prospective client, 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. The situation is fraught with the possibility of undue influence, intimidation, and overreaching.

[2] This potential for abuse inherent in direct in-person, live telephone or real-time electronic solicitation of prospective clients justifies its prohibition, particularly since lawyer advertising and written and recorded communication permitted under Rule 7.2 offer alternative means of conveying necessary information to those who may be in need of legal services. Advertising and written and recorded communications which may be mailed or autodialed make it possible for a prospective client to be informed about the need for legal services, and about the qualifications of available lawyers and law firms, without subjecting the prospective client to direct in-person, telephone or real-time electronic persuasion that may overwhelm the client's judgment.

[3] The use of general advertising and written, recorded or electronic communications to transmit information from lawyer to prospective client, 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 conversations between a lawyer and a prospective client 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.

[4] 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 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. Consequently, the general prohibition in Rule 7.3(a) and the requirements of Rule 7.3(c) are not applicable in those situations. Also, paragraph (a) 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 members or beneficiaries.

[5] But even permitted forms of solicitation can be abused. Thus, any solicitation which contains information which is false or misleading within the meaning of Rule

7.1, which involves coercion, duress or harassment within the meaning of Rule 7.3(b)(2), or which involves contact with a prospective client who has made known to the lawyer a desire not to be solicited by the lawyer within the meaning of Rule 7.3(b)(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 prospective client may violate the provisions of Rule 7.3(b).

[6] 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 a prospective client. 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.

[7] 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.

[8] Paragraph (d) of this Rule permits a lawyer to participate with an organization which 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 (d) 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 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 Rules 7.1, 7.2 and 7.3(b). See Rule 8.4(a).

Adopted July 1, 2009, effective January 1, 2010.

**RULE 7.4: COMMUNICATION OF FIELDS OF PRACTICE AND SPECIALIZATION**

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

(b) The Supreme Court of Illinois does not recognize certifications of specialties in the practice of law, nor does it recognize certifications of expertise in any phase of the practice of law by any agency, governmental or private, or by any group, organization or association. 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) Except when identifying certificates, awards or recognitions issued to him or her by an agency or organization, a lawyer may not use the terms "certified," "specialist," "expert," or any other, similar terms to describe his qualifications as a lawyer or his qualifications in any subspecialty of the law. If such terms are used to identify any certificates, awards or recognitions issued by any agency, governmental or private, or by any group, organization or association, the reference must meet the following requirements:

(1) the reference must be truthful and verifiable and may not be misleading in violation of Rule 7.1;

(2) the reference must state that the Supreme Court of Illinois does not recognize certifications of specialties in the practice of law and that the certificate, award or recognition is not a requirement to practice law in Illinois.

Adopted July 1, 2009, effective January 1, 2010.

**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.

[2] Paragraph (b) states the general policy of the Supreme Court of Illinois not to recognize certifications of specialties or expertise, except that it recognizes that admission to patent practice before the Patent and Trademark Office confers a long-

established and well-recognized status. The omission of reference to lawyers engaged in trademark or admiralty practice that were contained in the prior rule is not intended to suggest that such lawyers may not use terms such as “Trademark Lawyer” or “Admiralty” to indicate areas of practice as permitted by paragraph (a).

[3] Paragraph (c) permits a lawyer to state that the lawyer is certified, is a specialist in a field of law, or is an “expert” or any other similar term, only if certain requirements are met.

Adopted July 1, 2009, effective January 1, 2010.

#### **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 when that is the fact.

Adopted July 1, 2009, effective January 1, 2010.

#### **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, or the name of a nonlawyer.

[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.

Adopted July 1, 2009, effective January 1, 2010.

#### **RULE 7.6: RESERVED**

#### **RULE 8.1: BAR ADMISSION AND DISCIPLINARY MATTERS**

An applicant for admission to the bar, or a lawyer in connection with a bar admission application or in connection with a disciplinary matter, shall not:

(a) knowingly make a false statement of material fact; or

(b) fail to disclose a fact necessary to correct a misapprehension known by the person to have arisen in the matter, or knowingly fail to respond to a lawful demand for information from an admissions or disciplinary authority, except that this Rule does not require disclosure of information otherwise protected by these Rules or by law.

Adopted July 1, 2009, effective January 1, 2010.

#### **Comment**

[1] The duty imposed by this Rule extends to persons seeking admission to the bar as well as to lawyers. Hence, if a person makes a material false statement in connection with an application for admission, it may be the basis for subsequent disciplinary action if the person is admitted, and in any event may be relevant in a subsequent admission application. The duty imposed by this Rule applies to a lawyer's own admission or discipline as well as that of others. Thus, it is a separate

Minnesota

**MINNESOTA RULES  
OF  
PROFESSIONAL CONDUCT**

Effective October 1, 2005,  
with amendments through July 1, 2011

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On June 17, 2005, the Minnesota Supreme Court ordered that:

- 1) the amendments to the Minnesota Rules of Professional Conduct contained herein are prescribed and promulgated to be effective October 1, 2005.
  - 2) the inclusion of comments is made for convenience and does not reflect court approval of the comments made therein.
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this rule, the Rules of Professional Conduct, including Rules 1.6 and 1.9(c), are applicable to the limited representation.

[3] Because a lawyer who is representing a client in the circumstances addressed by this rule ordinarily is not able to check systematically for conflicts of interest, paragraph (a) requires compliance with Rule 1.7 or 1.9(a) only if the lawyer knows that the representation presents a conflict of interest for the lawyer, and with Rule 1.10 only if the lawyer knows that another lawyer in the lawyer's firm is disqualified by Rule 1.7 or 1.9(a) in the matter.

[4] Because the limited nature of the services significantly reduces the risk of conflicts of interest with other matters being handled by the lawyer's firm, paragraph (b) provides that Rule 1.10 is inapplicable to a representation governed by this rule except as provided by paragraph (a)(2). Paragraph (a)(2) requires the participating lawyer to comply with Rule 1.10 when the lawyer knows that the lawyer's firm is disqualified by Rule 1.7 or 1.9(a). By virtue of paragraph (b), however, a lawyer's participation in a short-term limited legal services program will not preclude the lawyer's firm from undertaking or continuing the representation of a client with interests adverse to a client being represented under the program's auspices. Nor will the personal disqualification of a lawyer participating in the program be imputed to other lawyers participating in the program.

[5] If, after commencing a short-term limited representation in accordance with this rule, a lawyer undertakes to represent the client in the matter on an ongoing basis, Rules 1.7, 1.9(a) and 1.10 become applicable.

## 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] 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 a prospective client.

[4] 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.

## **RULE 7.2: ADVERTISING**

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

(b) A lawyer shall not give 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 lawyer referral service;

(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.

(c) Any communication made pursuant to this rule shall include the name of at least one lawyer or law firm responsible for its content.

### **Comment**

[1] 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 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 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 advertising, against advertising going beyond specified facts about a lawyer, or against "undignified" advertising. Television is now one of the most powerful media for getting information to the public, particularly persons of low and moderate income; prohibiting television 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.

[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] Lawyers are not permitted to pay others for channeling professional work. 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, 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. 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.

[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 prospective clients 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 laypersons 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 lawyer referral service.

[7] A lawyer who accepts assignments or referrals from a legal service plan or referrals from a not-for-profit 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 prospective clients, 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 prospective clients to think that it was a lawyer referral service sponsored by a state agency or bar association. Nor could the lawyer allow in-person or telephonic 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 a firm.

### **RULE 7.3: DIRECT CONTACT WITH PROSPECTIVE CLIENTS**

(a) A lawyer shall not by in-person or live telephone contact solicit professional employment from a prospective client when a significant motive for the lawyer's doing so is the lawyer's pecuniary gain, unless the person contacted:

(1) is a lawyer; or

(2) has a family, close personal, or prior professional relationship with the lawyer.

(b) A lawyer shall not solicit professional employment from a prospective client by written, recorded, or electronic communication or by in-person or telephone contact even when not otherwise prohibited by paragraph (a) if:

(1) the prospective client 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) Every written, recorded, or electronic communication from a lawyer soliciting professional employment from a prospective client known to be in need of legal services in a particular matter shall clearly and conspicuously include the words "Advertising Material" on the outside envelope, if any, and within any written, recorded, or electronic communication, unless the recipient of the communication is a person specified in paragraphs (a)(1) or (a)(2).

(d) Notwithstanding the prohibitions in paragraph (a), 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 or subscriptions for the plan from persons who are not known to need legal services in a particular matter covered by the plan.

### Comment

[1] There is a potential for abuse inherent in direct in-person or live telephone contact by a lawyer with a prospective client known to need legal services. These forms of contact between a lawyer and a prospective client subject the layperson to the private importuning of the trained advocate in a direct interpersonal encounter. The prospective client, 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. The situation is fraught with the possibility of undue influence, intimidation, and over-reaching.

[2] This potential for abuse inherent in direct in-person or live telephone solicitation of prospective clients justifies its prohibition, particularly since lawyer advertising and written and recorded communication permitted under Rule 7.2 offer alternative means of conveying necessary information to those who may be in need of legal services. Advertising and written and recorded communications which may be mailed or autodialed make it possible for a prospective client to be informed about the need for legal services, and about the qualifications of available lawyers and law firms, without subjecting the prospective client to direct in-person or telephone persuasion that may overwhelm the client's judgment.

[3] The use of general advertising and written, recorded or electronic communications to transmit information from lawyer to prospective client, rather than direct in-person or live telephone 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 or live telephone conversations between a lawyer and a prospective client 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.

[4] 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, 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. Consequently, the general prohibition in Rule 7.3(a) and the requirements of Rule 7.3(c) are not applicable in those situations. Also, paragraph (a) 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 members or beneficiaries.

[5] But even permitted forms of solicitation can be abused. Thus, any solicitation which contains information which is false or misleading within the meaning of Rule 7.1, which involves coercion, duress or harassment within the meaning of Rule 7.3(b)(2), or which involves contact with a prospective client who has made known to the lawyer a desire not to be solicited by the lawyer within the meaning of Rule 7.3(b)(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 prospective client may violate the provisions of Rule 7.3(b).

[6] 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 a prospective client. 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.

[7] 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.

[8] Paragraph (d) of this rule permits a lawyer to participate with an organization which 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 (d) 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 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 Rules 7.1, 7.2 and 7.3(b). See 8.4(a).

#### **RULE 7.4: COMMUNICATION OF FIELDS OF PRACTICE AND CERTIFICATION**

(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) In any communication subject to Rules 7.2, 7.3, or 7.5, a lawyer shall not state or imply that a lawyer is a specialist or certified as a specialist in a particular field of law except as follows:

(1) the communication shall clearly identify the name of the certifying organization, if any, in the communication; and

(2) if the attorney is not certified as a specialist or if the certifying organization is not accredited by the Minnesota Board of Legal Certification, the communication shall clearly state that the attorney is not certified by any organization accredited by the Board, and in any advertising subject to Rule 7.2, this statement shall appear in the same sentence that communicates the certification.

#### 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 that has been accredited by the Board of Legal Certification. 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.

[4] Lawyers may also be certified as specialists by organizations that either have not yet been accredited to grant such certification or have been disapproved. In such instances, the consumer may be misled as to the significance of the lawyer's status as a certified specialist. The rule therefore requires that a lawyer who chooses to communicate recognition by such an organization also clearly state the absence or denial of the organization's authority to grant such certification. Because lawyer advertising through public media and written or recorded communications invites the greatest danger of misleading consumers, the absence or denial of the organization's authority to grant certification must be clearly stated in such advertising in the same sentence that communicates 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 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.

[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.

## MAINTAINING THE INTEGRITY OF THE PROFESSION

### RULE 8.1: BAR ADMISSION AND DISCIPLINARY MATTERS

An applicant for admission to the bar, or a lawyer in connection with a bar admission application or in connection with a disciplinary matter, shall not:

(a) knowingly make a false statement of material fact; or

(b) fail to disclose a fact necessary to correct a misapprehension known by the person to have arisen in the matter, or knowingly fail to respond to a lawful demand for information from an admissions or disciplinary authority, except that this rule does not require disclosure of information otherwise protected by Rule 1.6.

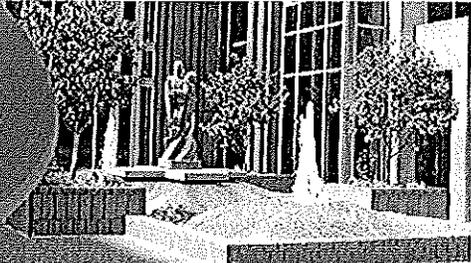
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Minnesota Rules of Professional Conduct (MRPC)

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Appendix 1 to MRPC

## Minnesota Rules of Professional Conduct

Rules on Lawyers Professional Responsibility (RLPR)

Effective October 1, 2005,  
with amendments through July 1, 2011

Lawyers Professional Responsibility Board Opinions

Lawyers Board Panel Manual

On June 17, 2005, the Minnesota Supreme Court ordered that:

Proposed/Pending Rules and Opinions

1. the amendments to the Minnesota Rules of Professional Conduct contained herein are prescribed and promulgated to be effective October 1, 2005.
2. the inclusion of comments is made for convenience and does not reflect court approval of the comments made therein.

**Minnesota Rules of Professional Conduct** [Adobe PDF](#)

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See also: [Lawyers Professional Responsibility Board Opinions - Interpretations of Minnesota Rules of Professional Conduct](#)

### Contact

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Office of Lawyers Professional Responsibility

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Missouri



Clerk Handbooks

Supreme Court Rules

<b>Subject:</b>	<b>Rule 4 - Rules Governing the Missouri Bar and the Judiciary - Rules of Professional Conduct</b>	<b>Section/Rule:</b>	<b>4- 7. 1</b>
		<b>Publication / Adopted Date:</b>	<b>September 28, 1993</b>
<b>Topic:</b>	<b>Information About Legal Services - Communication Concerning a Lawyer's Services</b>	<b>Revised / Effective Date:</b>	<b>July 1, 2010</b>

**RULE 4-7.1: COMMUNICATION 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 if it contains a material misrepresentation of fact or law.

A communication is misleading if it:

- (a) omits a fact as a result of which the statement considered as a whole is materially misleading;
- (b) is likely to create an unjustified expectation about results the lawyer can achieve;
- (c) proclaims results obtained on behalf of clients, such as the amount of a damage award or the lawyer's record in obtaining favorable verdicts or settlements, without stating that past results afford no guarantee of future results and that every case is different and must be judged on its own merits;
- (d) states or implies that the lawyer can achieve results by means that violate the Rules of Professional Conduct or other law;
- (e) compares the quality of a lawyer's or a law firm's services with other lawyers' services, unless the comparison can be factually substantiated;
- (f) advertises for a specific type of case concerning which the lawyer has neither experience nor competence;
- (g) indicates an area of practice in which the lawyer routinely refers matters to other lawyers, without conspicuous identification of such fact;

- (h) contains any paid testimonial about or endorsement of the lawyer, without conspicuous identification of the fact that payment has been made for the testimonial or endorsement;
- (i) contains any simulated portrayal of a lawyer, client, victim, scene, or event without conspicuous identification of the fact that it is a simulation;
- (j) provides an office address for an office staffed only part-time or by appointment only, without conspicuous identification of such fact; or
- (k) states that legal services are available on a contingent or no-recovery-no-fee basis without stating conspicuously that the client may be responsible for costs or expenses, if that is the case.

The presumptions that statements are misleading contained in Rule 4-7.1(c), (g), (h), and (k) shall not apply to a not-for-profit organization funded in whole or in part by the Legal Services Corporation established by 42 U.S.C section 2996(b) or to pro bono services provided free of charge by a not-for-profit organization, a court-annexed program, a bar association, or an accredited law school.

#### COMMENT

This Rule 4-7.1 governs all communications about a lawyer's services, including advertising permitted by Rule 4-7.2. Whatever means are used to make known a lawyer's services, statements about them should be truthful.

#### SUPPLEMENTAL MISSOURI COMMENT

This Rule 4-7.1 is not intended to alter the definition of "competence" as defined in Rule 4-1.1.

Rule 4-7.1 prohibits false or misleading communications. False and misleading statements have never enjoyed the limited first amendment protection afforded to other forms of commercial speech by *Bates v. State Bar of Arizona*, 433 U.S. 350 (1977), and its progeny.

Rule 4-7.1(c) allows a verifiable statement regarding the number of cases tried or handled in a particular area without the disclaimer language of Rule 4-7.1(c).

Rule 4-7.1(h) addresses the practice of using testimonials and endorsements by entertainers, sports figures, or other well-known persons. Rule 4-7.1 requires the disclosure of the fact that a payment was made to obtain the testimony or endorsement, thereby giving the public an opportunity to evaluate the credibility of the statement.

Rule 4-7.1(i) deals with simulations primarily utilized in the electronic media. Rule 4-7.1(i) permits simulations of a lawyer, client, victim, scene, or event if the advertising indicates that it is a simulation that is being portrayed. The simulation must contain a disclosure that it is a simulation in order to counteract any suggestion that the representation is a portrayal of actual fact. Rule 4-7.1(i) also permits a communication to contain a picture or other representation of the lawyer or lawyers providing the legal services that are the subject of the advertisement.

"Price" advertising can provide a valuable service to consumers of legal services and is not discouraged by the Rule 4. However, characterization of rates or fees chargeable by the lawyer or law firm such as "cut-rate," "lowest," "giveaway," "below cost," "discount," or "special" is misleading unless the comparison can be factually sustained.

A communication is false or misleading if it states or implies that the lawyer is able to influence improperly or upon irrelevant grounds any tribunal, legislative body, or public official.

A communication that portrays a former judge in a robe or in the courtroom accompanied by a reference to the lawyer as "judge" may be misleading as it may create an unjustified expectation about results the lawyer can achieve.

*(Adopted September 28, 1993, effective July 1, 1995. Amended September 19, 2005, effective January 1, 2006, Rev. July 1, 2007. Amended November 25, 2009, est. July 1, 2010.)*

# Your Missouri Courts



THE JUDICIAL BRANCH OF STATE GOVERNMENT

## Clerk Handbooks

### Supreme Court Rules

<b>Subject:</b>	<b>Rule 4 - Rules Governing the Missouri Bar and the Judiciary - Rules of Professional Conduct</b>	<b>Section/Rule:</b>	<b>4- 7. 2</b>
<b>Topic:</b>	<b>Information About Legal Services - Advertising</b>	<b>Publication / Adopted Date:</b>	<b>September 28, 1993</b>
		<b>Revised / Effective Date:</b>	<b>July 1, 2010</b>

#### **RULE 4-7.2: ADVERTISING**

(a) Subject to the requirements of Rule 4-7.1, a lawyer may advertise services through public media, such as a telephone directory, legal directory, newspaper or other periodical, outdoor advertising, radio, or television, or through direct mail advertising distributed generally to persons not known to need legal services of the kind provided by the lawyer in a particular matter.

(b) A copy or recording of an advertisement or written communication shall be kept for two years after its last dissemination along with a record of when and where it was used. The record shall include the name of at least one lawyer responsible for its content unless the advertisement or written communication itself contains the name of at least one lawyer responsible for its content.

(c) A lawyer shall not give anything of value to a person for recommending the lawyer's services, except that:

- (1) a lawyer may pay the reasonable cost of advertising or written communication permitted by this Rule 4-7.2;
- (2) a lawyer may pay the reasonable cost of advertising, written communication, or other notification required in connection with the sale of a law practice as permitted by Rule 4-1.17; and
- (3) a lawyer may pay the usual charges of a qualified lawyer referral service registered under Rule 4-9.1 or other not-for-profit legal services organization.

(d) A lawyer may not, directly or indirectly, pay all or a part of the cost of an advertisement in the public media unless such advertisement discloses the name and address of the financing lawyer, the relationship between the advertising lawyer and the financing lawyer, and whether the advertising lawyer is likely to refer cases received through the advertisement to the financing lawyer. Similarly, in any communications such as television, radio, or other electronic programs purporting to give the public legal advice or legal

information, for which programs the broadcaster receives any remuneration or other consideration, directly or indirectly, from the lawyer who appears on those programs, the lawyer shall conspicuously disclose to the public the fact that the broadcaster has been paid or receives consideration from the lawyer appearing on the program.

(e) A lawyer or law firm shall not advertise the existence of any office other than the principal office unless:

(1) that other office is staffed by a lawyer at least three days a week, or

(2) the advertisement states:

(A) the days and times during which a lawyer will be present at that office, or

(B) that meetings with lawyers will be by appointment only.

(f) Any advertisement or communication made pursuant to this Rule 4-7.2, other than written solicitations governed by the disclosure rules of Rule 4-7.3(b), shall contain the following conspicuous disclosure:

“The choice of a lawyer is an important decision and should not be based solely upon advertisements.”

"Conspicuous" means that the required disclosure must be of such size, color, contrast, location, duration, cadence, or audibility that an ordinary person can readily notice, read, hear, or understand it.

(g) The disclosures required by Rule 4-7.2(e) and (f) need not be made if the information communicated is limited to the following:

(1) the name of the law firm and the names of lawyers in the firm;

(2) one or more fields of law in which the lawyer or law firm practices;

(3) the date and place of admission to the bar of state and federal courts; and

(4) the address, including e-mail and web site address, telephone number, and office hours.

(h) Any words or statements required by Rules 4-7.1, 4-7.2, or 4-7.3 to appear in an advertisement or direct mail communication must appear in the same language in a which the advertisement or direct mail solicitation appears. If more than one language is used in an advertisement or direct mail communication, any words or statements required by Rules 4-7.1 to 4-7.6 must appear in each language used in the advertisement or direct mail communication.

(i) The provisions of Rule 4-7.2 shall not apply to services provided by a not-for-profit organization funded in whole or in part by the Legal Services Corporation established by 42 U.S.C. section 2996(b) or to pro bono services provided free of charge by a not-for-profit organization, a court-annexed program, a bar association, or an accredited law school.

The provisions of Rule 4-7.2 shall not apply to law firms or lawyers who promote, support or publicize through advertising that substantially and predominantly features any of the following: legal services corporation; community or other non-profit organization; recognized community events or celebrations;

institutions; entities; or individuals other than themselves.

### COMMENT

[1] 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 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.

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

[2] A lawyer is allowed to pay for advertising permitted by this Rule 4-7.2, but otherwise is not permitted to pay another person for channeling professional work. This restriction does not prevent an organization or person other than the lawyer from advertising or recommending the lawyer's services. Thus, a legal aid agency or prepaid legal services plan may pay to advertise legal services provided under its auspices. Likewise, a lawyer may participate in not-for-profit lawyer referral programs and pay the usual fees charged by such programs. Rule 4-7.2(c) does not prohibit paying regular compensation to an assistant, such as a secretary, to prepare communications permitted by this Rule. Rule 4-7.2(c) also does not prohibit paying a person for making a testimonial or endorsement in compliance with Rule 4-7.1(h).

### SUPPLEMENTAL MISSOURI COMMENT

Advertising concerning a lawyer's services should be motivated by a desire to educate the public to an awareness of legal needs and to provide information relevant to the selection of appropriate counsel. Information communicated in advertising should be disseminated in an objective and understandable fashion and should be relevant to a prospective client's ability to choose a lawyer. A lawyer should strive to communicate such information without undue emphasis upon advertising stratagems, which serve to hinder rather than to facilitate intelligent selection of counsel. Tasteful advertising is a matter of subjective interpretation. However, in all communications concerning a lawyer's services, a lawyer should avoid advertising that serves to denigrate the dignity of the profession or trust in courts, of which every lawyer functions as an officer.

Rule 4-7.2(d) and (e) have been added to jointly address the problem of advertising that experience has shown misleads the public concerning the location where services will be provided or the lawyer who will be performing these services. Together they prohibit the same sort of "bait and switch" advertising tactics by lawyers that are universally condemned.

Rule 4-7.2(e) also prohibits advertising the availability of a satellite office that is not staffed by a lawyer at least on a part-time basis. Rule 4-7.2 does not require, however, that a lawyer or firm identify the particular office as its principal one. Experience has shown that, in the absence of such regulation, members of the public have been misled into employing a lawyer in a distant city who advertises that there is a nearby satellite office, only to learn later that the lawyer is rarely available to the client because the nearby office is seldom open or is staffed only by lay personnel.

Rule 4-7.2(e) is not intended to restrict the ability of legal services programs to advertise satellite offices in remote parts of the program's service area even if those satellite offices are staffed irregularly by attorneys. Otherwise, low-income individuals in and near such communities might be denied access to the only legal services truly available to them.

When a lawyer or firm advertises, the public has a right to expect that lawyer or firm will perform the legal services. Experience has shown that lawyers not in the same firm may create a relationship wherein one will finance advertising for the other in return for referrals. Nondisclosure of such a referral relationship is misleading to the public. Accordingly, Rule 4-7.2(d) prohibits such a relationship between an advertising lawyer and a lawyer who finances the advertising unless the advertisement discloses the nature of the financial relationship between the two lawyers. Rule 4-7.2(d) also requires disclosure if a broadcaster receives remuneration from a lawyer appearing on any television, radio, or other electronic program purporting to give the public legal advice.

In the case of television, the disclosure required by Rule 4-7.2(f) may be made orally or in writing. In the case of radio, the disclosure must be made orally. The disclosure required by Rule 4-7.2(f) may, at the option of the advertiser, include the following language: "This disclosure is required by rule of the Supreme Court of Missouri." This disclosure is only required for advertisements in Missouri.

Disclosures that are large in size, are emphasized through a sharply contrasting color, and, in the case of television advertisements, remain visible or audible for a sufficiently long duration are likely to be more effective than those lacking such prominence. The disclosure should be prominent enough that the ordinary person will actually see and understand it in the context of the actual advertisement. Disclosures generally are more effective when they are made in the same mode (visual or oral) in which the claim necessitating the disclosure is presented.

Even if a disclosure is large in size and long in duration, other elements of an advertisement may distract the ordinary person so that they may fail to notice the disclosure. The advertisement should take care not to undercut the effectiveness of disclosures by placing them in competition with other arresting elements of the advertisement.

*(Amended June 21, 1994, effective January 1, 1995. Amended December 1, 1994, effective July 1, 1995. Amended August 1, 1995, effective January 1, 1996. Amended November 25, 2003, effective January 1, 2004. Amended September 19, 2005, effective January 1, 2006., Rev. July 1, 2007. Amended November 25, 2009, est. July 1, 2010.)*

# Your Missouri Courts



THE JUDICIAL BRANCH OF STATE GOVERNMENT

## Clerk Handbooks

### Supreme Court Rules

<b>Subject:</b>	<b>Rule 4 - Rules Governing the Missouri Bar and the Judiciary - Rules of Professional Conduct</b>	<b>Section/Rule:</b>	<b>4- 7. 3</b>
		<b>Publication / Adopted Date:</b>	<b>September 28, 1993</b>
<b>Topic:</b>	<b>Information About Legal Services - Direct Contact with Prospective Clients</b>	<b>Revised / Effective Date:</b>	<b>July 1, 2010</b>

### RULE 4-7.3: DIRECT CONTACT WITH PROSPECTIVE CLIENTS

This Rule 4-7.3 applies to in-person and written solicitations by a lawyer with persons known to need legal services of the kind provided by the lawyer in a particular matter for the purpose of obtaining professional employment.

(a) **In-person solicitation.** A lawyer may not initiate the in-person, telephone, or real time electronic solicitation of legal business under any circumstance, other than with an existing or former client, lawyer, close friend, or relative.

(b) **Written Solicitation.** A lawyer may initiate written solicitations to an existing or former client, lawyer, friend, or relative without complying with the requirements of this Rule 4-7.3(b). Written solicitations to others are subject to the following requirements:

(1) any written solicitation by mail shall be plainly marked "ADVERTISEMENT" on the face of the envelope and all written solicitations shall be plainly marked "ADVERTISEMENT" at the top of the first page in type at least as large as the largest written type used in the written solicitation;

(2) the lawyer shall retain a copy of each such written solicitation for two years. If written identical solicitations are sent to two or more prospective clients, the lawyer may comply with this requirement by retaining a single copy together with a list of the names and addresses of persons to whom the written solicitation was sent;

(3) each written solicitation must include the following:

"Disregard this solicitation if you have already engaged a lawyer in connection with the legal matter referred to in this solicitation. You may wish to consult your lawyer or another lawyer instead of me (us). The exact nature of your legal situation will depend on many facts not known to me (us) at this time. You should understand that the advice and information in this solicitation is general and that your

own situation may vary. This statement is required by rule of the Supreme Court of Missouri;”

- (4) written solicitations mailed to prospective clients shall be sent only by regular United States mail, not registered mail or other forms of restricted or certified delivery;
- (5) written solicitations mailed to prospective clients shall not be made to resemble legal pleadings or other legal documents;
- (6) any written solicitation prompted by a specific occurrence involving or affecting the intended recipient of the solicitation or family member shall disclose how the lawyer obtained the information prompting the solicitation;
- (7) a written solicitation seeking employment by a specific prospective client in a specific matter shall not reveal on the envelope or on the outside of a self-mailing brochure or pamphlet the nature of the client’s legal problem;
- (8) if a lawyer knows that a lawyer other than the lawyer whose name or signature appears on the solicitation will actually handle the case or matter or that the case or matter will be referred to another lawyer or law firm, any written solicitation concerning a specific matter shall include a statement so advising the potential client; and
- (9) a lawyer shall not send a written solicitation regarding a specific matter if the lawyer knows or reasonably should know that the person to whom the solicitation is directed is represented by a lawyer in the matter.

(c) A lawyer shall not send, nor knowingly permit to be sent, on behalf of the lawyer, the lawyer’s firm, the lawyer’s partner, an associate, or any other lawyer affiliated with the lawyer or the lawyer’s firm a written solicitation to any prospective client for the purpose of obtaining professional employment if:

- (1) it has been made known to the lawyer that the person does not want to receive such solicitations from the lawyer;
- (2) the written solicitation involves coercion, duress, fraud, overreaching, harassment, intimidation, or undue influence;
- (3) the written solicitation contains a false, fraudulent, misleading, or deceptive statement or claim or makes claims as to the comparative quality of legal services, unless the comparison can be factually substantiated, or asserts opinions about the liability of the defendant or offers assurances of client satisfaction;
- (4) the written solicitation concerns an action for personal injury or wrongful death or otherwise relates to an accident or disaster involving the person solicited or a relative of that person if the accident or disaster occurred less than 30 days prior to the solicitation or if the lawyer knows or reasonably should know that the physical, emotional, or mental state of the person solicited makes it unlikely that the person would exercise reasonable judgment in employing a lawyer; or

(5) the written solicitation vilifies, denounces or disparages any other potential party.

(d) The provisions of Rule 4-7.3 shall not apply to services provided by a not-for-profit organization funded in whole or in part by the Legal Services Corporation established by 42 U.S.C. Section 2996(b) or to pro bono services provided free of charge by a not-for-profit organization, a court annexed program, a bar association, or an accredited law school.

#### COMMENT

[1] There is a potential for abuse inherent in direct in-person, live telephone, or real-time electronic contact by a lawyer with a prospective client known to need legal services. These forms of contact between a lawyer and a prospective client subject the layperson to the private importuning of the trained advocate in a direct interpersonal encounter. The prospective client, who already may 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. The situation is fraught with the possibility of undue influence, intimidation, and over-reaching.

[2] The use of general advertising and written, recorded, or electronic communications to transmit information from lawyer to prospective client, 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 4-7.2 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 4-7.1. The contents of direct in-person, live telephone or real-time electronic conversations between a lawyer and a prospective client 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.

[3] 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 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. Consequently, the general prohibition in Rule 4-7.3(a) and the requirements of Rule 4-7.3(b) are not applicable in those situations. Also, Rule 4-7.3(a) 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 members or beneficiaries.

[4] 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 4-7.1, which involves coercion, duress, or harassment within the meaning of Rule 4-7.3(c)(2), or which involves contact with a prospective client who has made known to the lawyer a desire not to be solicited by the lawyer within the meaning of Rule 4-7.3(c)(1) is prohibited.

[5] This Rule 4-7.3 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 that the lawyer or lawyer's firm is willing to offer. This form of communication is not directed to a prospective client. 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 4-7.2.

[6] The requirement in Rule 4-7.3(b)(1) that certain communications be marked "Advertisement" 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 4-7.3.

#### **SUPPLEMENTAL MISSOURI COMMENT**

Rule 4-7.3(a) is similar to but less restrictive than Iowa Disciplinary Rule DR 2-101(4). The United States Supreme Court in the case of *Ohralik v. Ohio State Bar Association*, 436 U.S. 447 (1978), held that a state could categorically ban all in-person solicitation.

Rule 4-7.3(b)(1) and (b)(2) are from Rule 4-7.3 of the Rhode Island rules of the court. Rule 4-7.3(b)(9), (c)(1), and (c)(2) are from Rhode Island Rule 4-7.3(b)(2)(a), (b), and (c).

Rule 4-7.3(c)(3) is taken in part from suggestions found in *Shapero v. Kentucky Bar Assn.*, 486 U. S. 466 (1988), which condemned written solicitation that unduly emphasized trivial and uninformative facts or that stated that "the liability of the defendants is clear" or that made claims about the quality of legal services.

Rule 4-7.3(c)(4) is taken from South Carolina Appellate Court Rule 4-7.3(b)(3) and is similar to Florida's 30-day ban on direct mailing of solicitations to personal injury and wrongful death clients. The Florida 30-day moratorium was upheld in *Florida Bar v. Went For It, Inc.*, 515 U.S. 618 (1995). The Supreme Court held that the Florida rule did not violate the lawyer's first amendment rights because it served a legitimate state interest in protecting the privacy and sensibilities of accident victims and helped preserve the integrity of the bar and the public's perception of the administration of justice.

Rule 4-7.3(b)(3) to (8) are taken from South Carolina Appellate Court Rule 7.3(c)(2) and (3), except South Carolina Rule 7.3(c)(3)(i) was eliminated.

The requirements of Rule 4-7.3(b) apply to written solicitations disseminated in Missouri.

*(Amended June 21, 1994, effective January 1, 1995. Amended December 19, 1995, effective July 1, 1996. Amended September 19, 2005, effective January 1, 2006, Rev. July 1, 2007. Amended November 25, 2009, effective July 1, 2010.)*

# Your Missouri Courts



THE JUDICIAL BRANCH OF STATE GOVERNMENT

## Clerk Handbooks

### Supreme Court Rules

<b>Subject:</b>	<b>Rule 4 - Rules Governing the Missouri Bar and the Judiciary - Rules of Professional Conduct</b>	<b>Section/Rule:</b>	<b>4- 7, 4</b>
<b>Topic:</b>	<b>Information About Legal Services - Communication of Fields of Practice and Specialization</b>	<b>Publication / Adopted Date:</b>	<b>October 16, 1991</b>
		<b>Revised / Effective Date:</b>	<b>July 1, 2007</b>

#### **RULE 4-7.4: COMMUNICATION OF FIELDS OF PRACTICE AND SPECIALIZATION**

A lawyer may communicate the fact that the lawyer does or does not practice in particular fields of law. Any such communication shall conform to the requirements of Rule 4-7.1. Except as provided in Rule 4-7.4(a) and (b), a lawyer shall not state or imply that the lawyer is a specialist unless the communication contains a disclaimer that neither the Supreme Court of Missouri nor The Missouri Bar reviews or approves certifying organizations or specialist designations.

(a) 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;

(b) A lawyer engaged in admiralty practice may use the designation "admiralty," "proctor in admiralty" or a substantially similar designation.

#### **COMMENT**

[1] Rule 4-7.4 permits a lawyer to indicate areas of practice in communications about the lawyer's services; for example, in a telephone directory or other advertising. If a lawyer practices only in certain fields, or will not accept matters except in such fields, the lawyer is permitted so to indicate.

[2] Recognition of specialization in patent matters is a matter of long-established policy of the Patent and Trademark Office. Designation of admiralty practice has a long historical tradition associated with maritime commerce and the federal courts.

[3] The second sentence of this Rule 4-7.4 has been added to the ABA Model Rule in order to ensure that any field-of-practice advertising complies with the general rule concerning communications about lawyers' services.

*(Amended Oct. 16, 1991, eff July 1, 1995, Rev. July 1, 2007)*

# Your Missouri Courts



THE JUDICIAL BRANCH OF STATE GOVERNMENT

## Clerk Handbooks

### Supreme Court Rules

<b>Subject:</b>	<b>Rule 4 - Rules Governing the Missouri Bar and the Judiciary - Rules of Professional Conduct</b>	<b>Section/Rule:</b>	<b>4- 7. 5</b>
		<b>Publication / Adopted Date:</b>	<b>September 28, 1993</b>
<b>Topic:</b>	<b>Information About Legal Services - Firm Names and Letterheads</b>	<b>Revised / Effective Date:</b>	<b>July 1, 2007</b>

#### **RULE 4-7.5: FIRM NAMES AND LETTERHEADS**

- (a) A lawyer shall not use a firm name, letterhead, or other professional designation that violates Rule 4-7.1. 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 4-7.1.
- (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.

[2] With regard to Rule 4-7.5(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.

*(Adopted September 28, 1993, eff. July 1, 1995, Rev. July 1, 2007)*

Nebraska

CHAPTER 3

ATTORNEYS AND THE PRACTICE OF LAW

ARTICLE 5

NEBRASKA RULES OF PROFESSIONAL CONDUCT

Section.

Revisor's note.

Preamble: A lawyer's responsibilities.

Scope.

3-501.0. Terminology.

*Client-Lawyer Relationship*

3-501.1. Competence.

3-501.2. Scope of representation and allocation of authority between client and lawyer.

3-501.3. Diligence.

3-501.4. Communications.

3-501.5. Fees.

3-501.6. Confidentiality of information.

3-501.7. Conflict of interest; current clients.

3-501.8. Conflict of interest; current clients; specific rules.

3-501.9. Duties to former clients.

3-501.10. Imputation of conflicts of interest; general rule.

3-501.11. Special conflicts of interest for former and current government officers and employees.

3-501.12. Former judge, arbitrator, mediator or other third-party neutral.

3-501.13. Organization as client.

3-501.14. Client with diminished capacity.

3-501.15. Safekeeping property.

3-501.16. Declining or terminating representation.

3-501.17. Sale of law practice rule.

3-501.18. Duties to prospective client.

*Counselor*

3-502.1. Advisor.

3-502.2. Evaluation for use by third persons.

3-502.3. Lawyer serving as third-party neutral.

*Advocate*

3-503.1. Meritorious claims and contentions.

3-503.2. Expediting litigation.

3-503.3. Candor toward the tribunal.

3-503.4. Fairness to opposing party and counsel.

3-503.5. Impartiality and decorum of the tribunal.

3-503.6. Trial publicity.

3-503.7. Lawyer as witness.

disqualified by Rules 1.7 or 1.9(a). By virtue of paragraph (b), however, a lawyer's participation in a short-term limited legal services program will not preclude the lawyer's firm from undertaking or continuing the representation of a client with interests adverse to a client being represented under the program's auspices. Nor will the personal disqualification of a lawyer participating in the program be imputed to other lawyers participating in the program.

[5] If, after commencing a short-term limited representation in accordance with this Rule, a lawyer undertakes to represent the client in the matter on an ongoing basis, Rules 1.7, 1.9(a) and 1.10 become applicable.

### **Information About Legal Services**

#### **§ 3-507.1. 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] 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 a prospective client.

[4] 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.

**§ 3-507.2. Advertising.**

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

**(b) A lawyer shall not give 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.**

**(c) 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 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 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 advertising, against advertising going beyond specified facts about a lawyer, or against "undignified" advertising. Television is now one of the most powerful media for getting information to the public, particularly persons of low and moderate income; prohibiting television 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. Similarly, electronic media, such as the Internet, can be an important source of information about legal services, and lawful communication by electronic mail is permitted by this Rule. But see Rule 7.3(a) for the prohibition against the solicitation of a prospective client through a real-time electronic exchange that is not initiated by the prospective client.

[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] Lawyers are not permitted to pay others for channeling professional work. 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, 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. 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.

[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 prospective clients 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 laypersons 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 prospective clients. 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 prospective clients; (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 refer prospective clients 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 prospective clients, 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 prospective clients 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.

**§ 3-507.3. Direct contact with prospective clients.**

(a) A lawyer shall not by in-person, live telephone or real-time electronic contact solicit professional employment from a prospective client when a significant motive for the lawyer's doing so is the lawyer's pecuniary gain, unless the person contacted:

(1) is a lawyer; or

(2) has a family, close personal or prior professional relationship with the lawyer.

(b) A lawyer shall not solicit professional employment from a prospective client by written, recorded or electronic communication or by in-person, telephone or real-time electronic contact even when not otherwise prohibited by paragraph (a), if:

(1) the prospective client 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) Every written, recorded or electronic communication from a lawyer soliciting professional employment from a prospective client shall include the words "This is an advertisement" on the outside envelope, if any, and at the beginning and ending of any recorded or electronic communication, and in the subject line of an email, unless the recipient of the communication is a person specified in paragraphs (a)(1) or (a)(2). "This is an advertisement" shall appear in type size at least as large as the print of the address and shall be located in a conspicuous place on the envelope or postcard.

(d) Notwithstanding the prohibitions in paragraph (a), 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 or subscriptions for the plan from persons who are not known to need legal services in a particular matter covered by the plan.

**COMMENT**

[1] There is a potential for abuse inherent in direct in-person, live telephone or real-time electronic contact by a lawyer with a prospective client known to need legal services. These forms of contact

between a lawyer and a prospective client subject the layperson to the private importuning of the trained advocate in a direct interpersonal encounter. The prospective client, 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. The situation is fraught with the possibility of undue influence, intimidation and over-reaching.

[2] This potential for abuse inherent in direct in-person, live telephone or real-time electronic solicitation of prospective clients justifies its prohibition, particularly since lawyer advertising and written and recorded communication permitted under Rule 7.2 offer alternative means of conveying necessary information to those who may be in need of legal services. Advertising and written and recorded communications which may be mailed or autodialed make it possible for a prospective client to be informed about the need for legal services, and about the qualifications of available lawyers and law firms, without subjecting the prospective client to direct in-person, telephone or real-time electronic persuasion that may overwhelm the client's judgment.

[3] The use of general advertising and written, recorded or electronic communications to transmit information from lawyer to prospective client, 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 conversations between a lawyer and a prospective client 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.

[4] 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 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. Consequently, the general prohibition in Rule 7.3(a) and the requirements of Rule 7.3(c) are not applicable in those situations. Also, paragraph (a) 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 members or beneficiaries.

[5] But even permitted forms of solicitation can be abused. Thus, any solicitation which contains information which is false or misleading within the meaning of Rule 7.1, which involves coercion, duress or harassment within the meaning of Rule 7.3(b)(2), or which involves contact with a prospective client who has made known to the lawyer a desire not to be solicited by the lawyer within the meaning of Rule 7.3(b)(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 prospective client may violate the provisions of Rule 7.3(b).

[6] 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 a prospective client. 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.

[7] The requirement in Rule 7.3(c) that certain communications be marked "This is an advertisement" 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.

[8] Paragraph (d) of this Rule permits a lawyer to participate with an organization which 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 (d) 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 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 Rules 7.1, 7.2 and 7.3(b). See Rule 8.4(a).

#### **§ 3-507.4. 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 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 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 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.

#### **§ 3-507.5. 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:**

**(1) the trade name includes the name of at least one of the lawyers practicing under said name. A law firm consisting solely of the name or names of deceased or retired members of the firm does not have to include the name of an active member of the firm;**

**(2) the trade name does not imply a connection with a government entity, with a public or charitable legal services organization or any other organization, association or institution or entity, unless there is, in fact, a connection; and**

**(3) the trade name 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. 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.

[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.

### Maintaining the Integrity of the Profession

#### § 3-508.1. Bar admission and disciplinary matters.

An applicant for admission to the bar, or a lawyer in connection with a bar admission application or in connection with a disciplinary matter, shall not:

(a) knowingly make a false statement of material fact; or

(b) fail to disclose a fact necessary to correct a misapprehension known by the person to have arisen in the matter, or knowingly fail to respond to a lawful demand for information from an admissions or disciplinary authority, except that this rule does not require disclosure of information otherwise protected by Rule 1.6.

## COMMENT

[1] The duty imposed by this Rule extends to persons seeking admission to the bar as well as to lawyers. Hence, if a person makes a material false statement in connection with an application for admission, it may be the basis for subsequent disciplinary action if the person is admitted, and in any event may be relevant in a subsequent admission application. The duty imposed by this Rule applies to a lawyer's own admission or discipline as well as that of others. Thus, it is a separate professional offense for a lawyer to knowingly make a misrepresentation or omission in connection with a disciplinary investigation of the lawyer's own conduct. Paragraph (b) of this Rule also requires correction of any prior misstatement in the matter that the applicant or lawyer may have made and affirmative clarification of any misunderstanding on the part of the admissions or disciplinary authority of which the person involved becomes aware.

[2] This Rule is subject to the provisions of the fifth amendment of the United States Constitution and corresponding provisions of state constitutions. A person relying on such a provision in response to a question, however, should do so openly and not use the right of nondisclosure as a justification for failure to comply with this Rule.

[3] A lawyer representing an applicant for admission to the bar, or representing a lawyer who is the subject of a disciplinary inquiry or proceeding, is governed by the rules applicable to the client-lawyer relationship, including Rule 1.6 and, in some cases, Rule 3.3.

South Dakota

**Rule 7.1. Communications Concerning a Lawyer's Services.****(a) Definitions.**

For the purpose of this Rule 7.1, the following terms shall have the following meanings:

- (1) "communication" means any message or offer made by or on behalf of a lawyer concerning the availability of the lawyer for professional employment which is directed to any former, present, or prospective client, including, but not limited to, the following:
  - (i) any use of firm name, trade name, fictitious name, or other professional designation of such lawyer;
  - (ii) any stationery, letterhead, business card, sign, brochure, or other comparable written material describing such lawyer;
  - (iii) any advertisement, regardless of medium, of such lawyer, directed to the general public or any significant portion thereof; or
  - (iv) any unsolicited correspondence from a lawyer directed to any person or entity; and
- (2) "lawyer" means an individual lawyer and any association of lawyers for the practice of law, including a partnership, a professional corporation, limited liability company or any other association.

**(b) Purpose of Communications.**

All communications shall be predominantly informational. As used in this Rule 7.1, "predominantly informational" means that, in both quantity and quality, the communication of factual information rationally related to the need for and selection of a lawyer predominates and that the communication includes only a minimal amount of content designed to attract attention to and create interest in the communication.

**(c) False or Misleading Communications.**

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 communication considered as a whole not materially misleading;
- (2) contains a prediction, warranty or guarantee regarding the future success of representation by the lawyer or is likely to create an unjustified expectation about results the lawyer can achieve;
- (3) contains an opinion, representation, implication or self-laudatory statement regarding the quality of the lawyer's legal services which is not susceptible of reasonable verification by the public;
- (4) contains information based on the lawyer's past success without a disclaimer that past success cannot be an assurance of future success because each case must be decided on its own merits;
- (5) compares the lawyer's services with other lawyers' services, unless the comparison can be factually substantiated;
- (6) states or implies that the lawyer actually represents clients in a particular area of practice when the lawyer refers a significant number of such clients to other lawyers for representation with respect to all or a significant aspect of the particular practice area;
- (7) states or implies that the lawyer is experienced in a particular area of practice unless significant experience in such practice area can be factually substantiated;
- (8) states or implies that the lawyer is in a position to improperly influence any court or other public body or office;

- (9) states or implies the existence of a relationship between the lawyer and a government agency or instrumentality;
  - (10) states or implies that a lawyer has a relationship to any other lawyer unless such relationship in fact exists and is close, personal, continuous and regular;
  - (11) fails to contain the name and address by city or town of the lawyer whose services are described in the communication;
  - (12) contains a testimonial about or endorsement of the lawyer, unless the lawyer can factually substantiate the claims made in the testimonial or endorsement and unless such communication also contains an express disclaimer substantively similar to the following: "This testimonial or endorsement does not constitute a guaranty, warranty, or prediction regarding the outcome of your legal matter";
  - (13) contains a testimonial or endorsement about the lawyer for which the lawyer has directly or indirectly given or exchanged anything of value to or with the person making the testimonial or giving the endorsement, unless the communication conspicuously discloses that the lawyer has given or exchanged something of value to or with the person making the testimonial or giving the endorsement;
  - (14) contains a testimonial or endorsement which is not made by an actual client of the lawyer, unless that fact is conspicuously disclosed in the communication;
  - (15) contains any impersonation, dramatization, or simulation which is not predominantly informational and without conspicuously disclosing in the communication the fact that it is an impersonation, dramatization, or simulation;
  - (16) fails to contain disclaimers or disclosures required by this Rule 7.1 or the other Rules of Professional Conduct;
  - (17) contains any other material statement or claim that cannot be factually substantiated.
- (d) **Lawyers Responsible for Communication.**  
Every lawyer associated in the practice of law with or employed by the lawyer which causes or makes a communication in violation of this rule may be subject to discipline for the failure of the communication to comply with the requirements of this rule.

**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] 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 a prospective client.

[4] 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.

## **Rule 7.2. Advertising.**

(a) Definition.

"Lawyer" is defined in Rule 7.1(a)(2).

(b) Permitted Advertising.

Subject to the requirements of Rules 7.1 and 7.3, 7.4 and 7.5, a lawyer may advertise legal services through written, recorded, internet, computer, e-mail or other electronic communication, including public media, such as a telephone directory, legal directory, newspapers or other periodicals, billboards and other signs, radio, television and other electronic media, and recorded messages the public may access by dialing a telephone number, or through other written or recorded communication. This rule shall not apply to any advertisement which is broadcast or disseminated in another jurisdiction in which the advertising lawyer is admitted if such advertisement complies with the rules governing lawyer advertising in that jurisdiction and is reasonably expected by the lawyer not to be received or disseminated in the State of South Dakota.

(c) Record of Advertising.

A copy or recording of an advertisement shall be kept by the advertising lawyer for two years after its last dissemination along with a record of when and where it was used.

(d) Prohibited Payments.

Except as provided in Rule 1.17 and except as provided in subparagraph (c)(13) of Rule 7.1, a lawyer shall not give 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 and may pay the usual charges of a not-for-profit legal service organization;
- (2) pay the usual charges of a not-for-profit 501(c)(3) or 501(c)(6) 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.

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.

(e) Prohibited Cost Sharing.

No lawyer shall, directly or indirectly, pay all or part of the cost of an advertisement by another lawyer with whom the nonadvertising lawyer is not associated in a partnership, professional corporation or limited liability company for the practice of law, unless the advertisement conspicuously discloses the name and address of the nonadvertising lawyer, and conspicuously discloses whether the advertising lawyer contemplates referring all or any part of the representation of a client obtained through the advertisement to the nonadvertising lawyer.

(f) Permissible Content.

The following information in advertisements and written communications shall be presumed not to violate the provisions of this Rule 7.2:

- (1) Subject to the requirements of Rule 7.5, the name of the lawyer, a listing of lawyers associated with the lawyer for the practice of law, office addresses and telephone numbers, office and telephone service hours, and a designation such as "lawyer," "attorney," "law firm," "partnership" or "professional corporation," or "limited liability company."

- (2) Date of admission to the South Dakota bar and any other bar association and a listing of federal courts and jurisdictions where the lawyer is licensed to practice.
  - (3) Technical and professional licenses granted by the State of South Dakota or other recognized licensing authorities.
  - (4) Foreign language ability.
  - (5) Fields of law in which the lawyer is certified subject to the requirements of Rule 7.4.
  - (6) Prepaid or group legal service plans in which the lawyer participates.
  - (7) Acceptance of credit cards.
  - (8) Information concerning fees and costs, or the availability of such information on request, subject to the requirements of this Rule 7.2 and the other Rules of Professional Conduct.
  - (9) A listing of the name and geographic location of a lawyer as a sponsor of a public service announcement or charitable, civic or community program or event. Such listings shall not exceed the traditional description of sponsors of or contributors to the charitable, civic or community program or event or public service announcement, and such listing must comply with the provisions of this rule and the other Rules of Professional Conduct.
  - (10) Schools attended, with dates of graduation, degree and other scholastic distinctions.
  - (11) Public or quasi-public offices.
  - (12) Military service.
  - (13) Legal authorships.
  - (14) Legal teaching positions.
  - (15) Memberships, offices and committee assignments in bar associations.
  - (16) Memberships and offices in legal fraternities and legal societies.
  - (17) Memberships in scientific, technical and professional associations and societies.
  - (18) Names and addresses of bank references.
  - (19) With their written consent, names of clients regularly represented.
  - (20) Office and telephone answering service hours.
- (g) Permissible Fee Information.
- (1) Advertisements permitted under this Rule 7.2 may contain information about fees for services as follows:
    - (i) the fee charged for an initial consultation;
    - (ii) availability upon request of a written schedule of fees or an estimate of fees to be charged for specific legal services;
    - (iii) that the charging of a fee is contingent on outcome or that the fee will be a percentage of the recovery, provided that the advertisement conspicuously discloses whether percentages are computed before or after deduction of costs, and only if it specifically and conspicuously states that the client will bear the expenses incurred in the client's representation, regardless of outcome, except as permitted by Rule 1.8(e);
    - (iv) the range of fees for services, provided that the advertisement conspicuously discloses that the specific fee within the range which will be charged will vary depending upon the particular matter to be handled for each client, that the quoted fee will be available only to clients whose legal representation is within the services described in the advertisement, and the client is entitled without obligation to an estimate of the fee within the range likely to be charged;
    - (v) the hourly rate, provided that the advertisement conspicuously discloses that the total fee charge will depend upon the number of hours which must be

- devoted to the particular matter to be handled for each client, and that the client is entitled without obligation to an estimate of the fee likely to be charged;
- (vi) fixed fees for specific legal services, provided that the advertisement conspicuously discloses that the quoted fee will be available only to a client seeking the specific services described.
- (2) A lawyer who advertises a specific fee, range of fees or hourly rate for a particular service shall honor the advertised fee or rate for at least ninety (90) days unless the advertisement conspicuously specifies a shorter period; provided, for advertisements in the yellow pages of telephone directories or other media not published more frequently than annually, the advertised fee or range of fees shall be honored for no less than one year following publication.
- (h) **Electronic Media.**  
Advertisements by electronic media, such as television and radio, may contain the same information as permitted in advertisements by print media, subject to the following requirements:
- (1) if a lawyer advertises by electronic media and a person appears in the advertisement purporting to be a lawyer, such person shall in fact be the advertising lawyer or a lawyer employed full-time by the advertising lawyer; and
  - (2) if a lawyer advertises a particular legal service by electronic media, and a person appears in the advertisement purporting to be or implying that the person is the lawyer who will render the legal service, the person appearing in the advertisement shall be the lawyer who will actually perform the legal service advertised unless the advertisement conspicuously discloses that the person appearing in the advertisement is not the person who will perform the legal service advertised.
  - (3) Advertisements disseminated by electronic media shall be prerecorded and the prerecorded communication shall be reviewed and approved by the lawyer before it is broadcast.
- (i) **Law Directories.**  
Nothing in this Rule 7.2 prohibits a lawyer from permitting the inclusion in reputable directories intended primarily for the use of the legal profession or institutional consumers of legal services and contains such information as has traditionally been included in such publications.
- (j) **Acceptance of Employment.**  
A lawyer shall not accept employment when he knows or should know that the person who seeks his services does so as a result of conduct prohibited under this Rule 7.2.
- (k) **Lawyers Responsible for Advertising.**  
Every lawyer associated in the practice of law with or employed by the lawyer which causes or makes an advertising in violation of this rule may be subject to discipline for the failure of the advertisement to comply with the requirements of this rule.
- (l) **Mandatory Disclosure.**  
Every lawyer shall, in any written or media advertisements, disclose the absence of professional liability insurance if the lawyer does not have professional liability insurance having limits of at least \$100,000, using the specific language required in Rule 1.4(c)(1) or (2).

**COMMENT:**

[1] 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 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 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 advertising, against advertising going beyond specified facts about a lawyer, or against "undignified" advertising. Television is now one of the most powerful media for getting information to the public, particularly persons of low and moderate income; prohibiting television 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. Similarly, electronic media, such as the Internet, can be an important source of information about legal services, and lawful communication by electronic mail is permitted by this Rule. But see Rule 7.3(a) for the prohibition against the solicitation of a prospective client through a real-time electronic exchange that is not initiated by the prospective client.

[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] Lawyers are not permitted to pay others for channeling professional work. 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, 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. 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.

[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 prospective clients 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 laypersons 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 prospective clients. 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 prospective clients; (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 refer prospective clients 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 prospective clients, 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 prospective clients 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.

#### **Disclosure of Lack of Malpractice Insurance**

[9] For purposes of the disclosure requirement of Rule 7.2(1), all advertising shall contain the specific disclosure language found at Rule 1.4(c)(1) or (2). The alphabetical listing of the name, address and phone number of the lawyer's office in a telephone directory, whether white pages or yellow pages, is not advertising for purposes of the disclosure rule. The mere use of bold face type in the alphabetical section of the phone book, white pages or yellow pages, does not constitute advertising for purposes of the disclosure. All yellow page block ads, regardless of content, constitute advertising and requires disclosure of the absence of professional liability insurance. There was no attempt to mandate a minimum decibel level for radio and television advertisements, nor size of type in newspaper, yellow page or billboard advertisements. However, the lawyer purchasing such advertisements is responsible for the content of the advertisement and must make reasonable efforts to insure that the disclosure is adequately communicated in the media selected.

#### **Rule 7.3. Direct Contact with Prospective Clients.**

- (a) A lawyer shall not by in-person, live telephone or real-time electronic contact solicit professional employment from a prospective client when a significant motive for the lawyer's doing so is the lawyer's pecuniary gain, unless the person contacted:
  - (1) is a lawyer; or
  - (2) has a family, close personal, or prior professional relationship with the lawyer.
- (b) A lawyer shall not solicit professional employment from a prospective client by written, recorded or electronic communication or by in-person, live telephone or real-time electronic contact even when not otherwise prohibited by paragraph (a), if:
  - (1) The prospective client 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) A copy of every written or recorded communication from a lawyer soliciting professional employment from a prospective client shall be deposited no less than thirty days prior to

its dissemination or publication with the Secretary-Treasurer of the South Dakota State Bar by mailing the same to the Office of the State Bar of South Dakota in Pierre, postage prepaid, return receipt requested.

- (d) Every written, recorded or electronic communication from a lawyer soliciting professional employment from a prospective client 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). Where the communication is written, the label shall appear in a minimum 18-point type or in type as large as the largest type otherwise used in the written communication, whichever is larger. This labeling requirement shall not apply to mailings of announcements of changes in address, firm structure or personnel, nor to mailings of firm brochures to persons selected on a basis other than prospective employment.
- (e) Notwithstanding the prohibitions in paragraph (a), 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 or subscriptions for the plan from persons who are not known to need legal services in a particular matter covered by the plan.

#### COMMENT:

[1] There is a potential for abuse inherent in direct in-person, live telephone or real-time electronic contact by a lawyer with a prospective client known to need legal services. These forms of contact between a lawyer and a prospective client subject the layperson to the private importuning of the trained advocate in a direct interpersonal encounter. The prospective client, 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. The situation is fraught with the possibility of undue influence, intimidation, and over-reaching.

[2] This potential for abuse inherent in direct in-person, live telephone or real-time electronic solicitation of prospective clients justifies its prohibition, particularly since lawyer advertising and written and recorded communication permitted under Rule 7.2 offer alternative means of conveying necessary information to those who may be in need of legal services. Advertising and written and recorded communications which may be mailed or autodialed make it possible for a prospective client to be informed about the need for legal services, and about the qualifications of available lawyers and law firms, without subjecting the prospective client to direct in-person, telephone or real-time electronic persuasion that may overwhelm the client's judgment.

[3] The use of general advertising and written, recorded or electronic communications to transmit information from lawyer to prospective client, 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 conversations between a lawyer and a prospective client 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.

[4] 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 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. Consequently, the general prohibition in Rule 7.3(a) and the requirements of Rule 7.3(c) are not applicable in those situations. Also, paragraph (a) 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 members or beneficiaries.

[5] But even permitted forms of solicitation can be abused. Thus, any solicitation which contains information which is false or misleading within the meaning of Rule 7.1, which involves coercion, duress or harassment within the meaning of Rule 7.3(b)(2), or which involves contact with a prospective client who has made known to the lawyer a desire not to be solicited by the lawyer within the meaning of Rule 7.3(b)(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 prospective client may violate the provisions of Rule 7.3(b).

[6] 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 a prospective client. 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.

[7] 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.

[8] Paragraph (d) of this Rule permits a lawyer to participate with an organization which 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 (d) 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 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 Rules 7.1, 7.2 and 7.3(b). See 8.4 (a).

#### **Rule 7.4. Communication of Fields of Practice and Specialization.**

A lawyer may communicate the fact that the lawyer does or does not practice in particular fields of law. If a lawyer practices only in certain fields, or will not accept matters except in such fields, the lawyer is permitted so to indicate. A lawyer shall not state or imply that the lawyer is a specialist except as follows:

- (a) 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.

- (b) A lawyer engaged in admiralty practice may use the designation "admiralty", "proctor in admiralty" or a substantially similar designation.
- (c) If a lawyer or firm practices in only certain fields and desires to advertise such limitations in the yellow pages of the telephone directory any such advertising must be accompanied by the following disclaimer appearing in a prominent and conspicuous manner in such advertising or on the same page as the advertising:
  - (1) Such certification is granted by an organization which has been approved by the appropriate regulatory authority to grant such certification; or
  - (2) Such certification is granted by an organization that has not yet been approved by, or has been denied the approval available from the appropriate regulatory authority, and the absence or denial of approval is clearly stated in the communication, and in any advertising subject to Rule 7.2, such statement appears in the same sentence that communicates the certification.
- (d) Pursuant to subsection (c)(1), the South Dakota Supreme Court hereby designates the American Bar Association as the appropriate regulatory authority to accredit specialty certification programs according to such standards and criteria as the American Bar Association may from time to time establish for accreditation of specialty programs.
- (e) 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 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 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.

**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 when that is the fact.
  - (e) The disclosure required in Rule 1.4(c)(1) or (2) shall be in black ink with type no smaller than the type used for showing the individual lawyer's names.

**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, or the name of a nonlawyer.

[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.

[3] The duty to report professional misconduct does not apply to a lawyer retained to represent a lawyer whose professional conduct is in question. Such a situation is governed by the rules applicable to the client-lawyer relationship.

[4] Rule 7.5(e) establishes the requirements for the letterhead component for all lawyers required to make the disclosure of the absence of professional liability insurance. While a lawyer may choose any color of ink for his or her letterhead, the disclosure component must be in black ink. The intent of this requirement is to avoid, for example, a lawyer selecting yellow bond paper for letterhead and printing the mandated disclosure in yellow ink. Further, recognizing the great variance of letterhead styles, rather than mandating a minimum type size, the rule requires that the disclosure be printed with type size no smaller than the type size used to print the lawyer's name. If a lawyer utilizes letterhead that omits the lawyer's name, then the disclosure shall be printed in type size reasonably necessary to comply with the disclosure requirement. Although not required, it is anticipated that most lawyers will prepare letterhead with the disclosure appearing centered and at the bottom of the letterhead.

Wisconsin

## RULES OF PROFESSIONAL CONDUCT

Updated 09-10 Wis. Stats. Appendix Database

**Wisconsin Committee Comment:** Unlike the Model Rule, paragraph (a) expressly provides coverage for programs sponsored by bar associations and accredited law schools.

**ABA Comment:** [1] Legal services organizations, courts and various nonprofit organizations have established programs through which lawyers provide short-term limited legal services — such as advice or the completion of legal forms — that will assist persons to address their legal problems without further representation by a lawyer. In these programs, such as legal-advice hotlines, advice-only clinics or pro se counseling programs, a client-lawyer relationship is established, but there is no expectation that the lawyer's representation of the client will continue beyond the limited consultation. Such programs are normally operated under circumstances in which it is not feasible for a lawyer to systematically screen for conflicts of interest as is generally required before undertaking a representation. See, e.g., Rules 1.7, 1.9 and 1.10.

[2] A lawyer who provides short-term limited legal services pursuant to this Rule must secure the client's informed consent to the limited scope of the representation. See Rule 1.2 (c). If a short-term limited representation would not be reasonable under the circumstances, the lawyer may offer advice to the client but must also advise the client of the need for further assistance of counsel. Except as provided in this Rule, the Rules of Professional Conduct, including Rules 1.6 and 1.9 (c), are applicable to the limited representation.

[3] Because a lawyer who is representing a client in the circumstances addressed by this Rule ordinarily is not able to check systematically for conflicts of interest, paragraph (a) requires compliance with Rules 1.7 or 1.9 (a) only if the lawyer knows that the representation presents a conflict of interest for the lawyer, and with Rule 1.10 only if the lawyer knows that another lawyer in the lawyer's firm is disqualified by Rules 1.7 or 1.9 (a) in the matter.

[4] Because the limited nature of the services significantly reduces the risk of conflicts of interest with other matters being handled by the lawyer's firm, paragraph (b) provides that Rule 1.10 is inapplicable to a representation governed by this Rule except as provided by paragraph (a) (2). Paragraph (a) (2) requires the participating lawyer to comply with Rule 1.10 when the lawyer knows that the lawyer's firm is disqualified by Rules 1.7 or 1.9 (a). By virtue of paragraph (b), however, a lawyer's participation in a short-term limited legal services program will not preclude the lawyer's firm from undertaking or continuing the representation of a client with interests adverse to a client being represented under the program's auspices. Nor will the personal disqualification of a lawyer participating in the program be imputed to other lawyers participating in the program.

[5] If, after commencing a short-term limited representation in accordance with this Rule, a lawyer undertakes to represent the client in the matter on an ongoing basis, Rules 1.7, 1.9 (a) and 1.10 become applicable.

## SUBCHAPTER VII

## INFORMATION ABOUT LEGAL SERVICES

**SCR 20:7.1 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:

(a) 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) is likely to create an unjustified expectation about results the lawyer can achieve, or states or implies that the lawyer can achieve results by means that violate the Rules of Professional Conduct or other law; or

(c) compares the lawyer's services with other lawyers' services, unless the comparison can be factually substantiated; or

(d) contains any paid testimonial about, or paid endorsement of, the lawyer without identifying the fact that payment has been made or, if the testimonial or endorsement is not made by an actual client, without identifying that fact.

**History:** Sup. Ct. Order No. 04-07, 2007 WI 4, 293 Wis. 2d xv.

**Wisconsin Committee Comment:** Paragraphs (b) through (d) of the Wisconsin Supreme Court Rule are not contained in the Model Rule.

**ABA 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] 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 a prospective client.

[4] See also Rule 8.4 (c) 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.

**SCR 20:7.2 Advertising.** (a) Subject to the requirements of SCR 20:7.1 and SCR 20:7.3, a lawyer may advertise services through written, recorded or electronic communication, including public media.

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

(1) pay the reasonable cost 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 SCR 20:1.17; 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

(i) the reciprocal referral arrangement is not exclusive;

(ii) the client gives informed consent;

(iii) there is no interference with the lawyer's independence of professional judgment or with the client-lawyer relationship; and

(iv) information relating to representation of a client is protected as required by SCR 20:1.6.

(c) 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.

**History:** Sup. Ct. Order No. 04-07, 2007 WI 4, 293 Wis. 2d xv.

**Wisconsin Committee Comment:** Paragraph (b) (4) differs from the Model Rule by requiring additional safeguards consistent with those found in SCR 20:1.8 (f). Lawyers should consider the "fee-splitting" provisions contained in SCR 20:5.4 when considering their obligations under this provision.

**ABA Comment:** [1] 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 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 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 advertising, against advertising going beyond specified facts about a lawyer, or against "undignified" advertising. Television is now one of the most powerful media for getting information to the public, particularly persons of low and moderate income; prohibiting television 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. Similarly, electronic media, such as the Internet, can be an important source of information about legal services, and lawful communication by electronic mail is permitted by this Rule. But see Rule 7.3 (a) for the prohibition against the solicitation of a prospective client through a real-time electronic exchange that is not initiated by the prospective client.

[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] Lawyers are not permitted to pay others for channeling professional work. 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, 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. 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.

[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 prospective clients 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 laypersons 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 prospective clients. 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 prospective clients; (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 refer prospective clients 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 prospective clients, 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 prospective clients 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 (c), 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.

**SCR 20:7.3 Direct contact with prospective clients.** (a) A lawyer shall not by in-person or live telephone or real-time electronic contact solicit professional employment from a prospective client when a significant motive for the lawyer's doing so is the lawyer's pecuniary gain, unless the person contacted:

- (1) is a lawyer; or
- (2) has a family, close personal or prior professional relationship with the lawyer.

(b) A lawyer shall not solicit professional employment from a prospective client by written, recorded or electronic communication or by in-person, telephone or real-time electronic contact even when not otherwise prohibited by par. (a), if:

- (1) the lawyer knows or reasonably should know that the physical, emotional or mental state of the person makes it unlikely that the person would exercise reasonable judgment in employing a lawyer; or
- (2) the prospective client has made known to the lawyer a desire not to be solicited by the lawyer; or
- (3) the solicitation involves coercion, duress or harassment.

(c) Every written, recorded or electronic communication from a lawyer soliciting professional employment from a prospective client 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 printed, recorded or electronic communication, unless the recipient of the communication is a person specified in pars. (a) (1) or (a) (2), and a copy of it shall be filed with the office of lawyer regulation within five days of its dissemination.

(d) Notwithstanding the prohibitions in par. (a), 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 or subscriptions for the plan from persons who are not known to need legal services in a particular matter covered by the plan.

(e) Except as permitted under SCR 11.06, a lawyer, at his or her instance, shall not draft legal documents, such as wills, trust

instruments or contracts, which require or imply that the lawyer's services be used in relation to that document.

**History:** Sup. Ct. Order No. 04-07, 2007 WI 4, 293 Wis. 2d xv.

**Wisconsin Committee Comment:** The Wisconsin Supreme Court Rule differs from the Model Rule in that paragraph (b) (1) has been added, as have the last clause of paragraph (c) and all of paragraph (e). These provisions are carried forward from the prior Wisconsin Supreme Court Rule.

When a lawyer uses standard form solicitations that are mailed to many prospective clients, the lawyer satisfies the filing obligation in subparagraph (c) by filing one copy of each version of the solicitation form with the office of lawyer regulation, and by maintaining in the lawyer's files the names and addresses to which the solicitation was mailed.

Because of differences in content and numbers between the Wisconsin Supreme Court Rule and the Model Rule, care should be used in consulting the ABA Comment.

**ABA Comment:** [1] There is a potential for abuse inherent in direct in-person, live telephone or real-time electronic contact by a lawyer with a prospective client known to need legal services. These forms of contact between a lawyer and a prospective client subject the layperson to the private importuning of the trained advocate in a direct interpersonal encounter. The prospective client, 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. The situation is fraught with the possibility of undue influence, intimidation, and over-reaching.

[2] This potential for abuse inherent in direct in-person, live telephone or real-time electronic solicitation of prospective clients justifies its prohibition, particularly since lawyer advertising and written and recorded communication permitted under Rule 7.2 offer alternative means of conveying necessary information to those who may be in need of legal services. Advertising and written and recorded communications which may be mailed or auto dialed make it possible for a prospective client to be informed about the need for legal services, and about the qualifications of available lawyers and law firms, without subjecting the prospective client to direct in-person, telephone or real-time electronic persuasion that may overwhelm the client's judgment.

[3] The use of general advertising and written, recorded or electronic communications to transmit information from lawyer to prospective client, 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 conversations between a lawyer and a prospective client 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.

[4] 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 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. Consequently, the general prohibition in Rule 7.3 (a) and the requirements of Rule 7.3 (c) are not applicable in those situations. Also, paragraph (a) 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 members or beneficiaries.

[5] But even permitted forms of solicitation can be abused. Thus, any solicitation which contains information which is false or misleading within the meaning of Rule 7.1, which involves coercion, duress or harassment within the meaning of Rule 7.3 (b) (2), or which involves contact with a prospective client who has made known to the lawyer a desire not to be solicited by the lawyer within the meaning of Rule 7.3 (b) (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 prospective client may violate the provisions of Rule 7.3 (b).

[6] 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 a prospective client. 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.

[7] 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.

[8] Paragraph (d) of this Rule permits a lawyer to participate with an organization which 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 (d) 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 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

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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 Rules 7.1, 7.2 and 7.3 (b). See Rule 8.4 (a).

**SCR 20:7.4 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 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 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.

History: Sup. Ct. Order No. 04–07, 2007 WI 4, 293 Wis. 2d xv.

Case Note: An attorney whose practice is concentrated in one particular area and who represents himself as a specialist should be held to a higher standard of care than a generalist. The enforceability of this section insofar as it prohibits statements that are truthful and not misleading is questionable. *Duffey Law Office v. Tank Transport*, 194 Wis. 2d 675, 335 N.W.2d 91 (Ct. App. 1995).

See, *Peel v. Attorney Registration and Disciplinary Commission of Illinois*, 496 U.S. 91, 110 S. Ct. 2281, 110 L. Ed. 2d 83 (1990).

NOTE: The above annotations cite to SCR 20:8 as it existed prior to the adoption of Sup. Ct. Order No. 04–07.

ABA 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 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.

**SCR 20:7.5 Firm names and letterheads.** (a) A lawyer shall not use a firm name, letterhead or other professional designation that violates SCR 20:7.1. 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 SCR 20:7.1.

(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.

History: Sup. Ct. Order No. 04–07, 2007 WI 4, 293 Wis. 2d xv.

ABA 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, or the name of a nonlawyer.

[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.

**SCR 20:7.6 Political contributions to obtain government legal engagements or appointments by judges.** A lawyer or law firm shall not accept a government legal engagement or an appointment by a judge if the lawyer or law firm makes a political contribution or solicits political contributions for the purpose of obtaining or being considered for that type of legal engagement or appointment.

History: Sup. Ct. Order No. 04–07, 2007 WI 4, 293 Wis. 2d xv.

ABA Comment: [1] Lawyers have a right to participate fully in the political process, which includes making and soliciting political contributions to candidates for judicial and other public office. Nevertheless, when lawyers make or solicit political contributions in order to obtain an engagement for legal work awarded by a government agency, or to obtain appointment by a judge, the public may legitimately question whether the lawyers engaged to perform the work are selected on the basis of competence and merit. In such a circumstance, the integrity of the profession is undermined.

[2] The term "political contribution" denotes any gift, subscription, loan, advance or deposit of anything of value made directly or indirectly to a candidate, incumbent, political party or campaign committee to influence or provide financial support for election to or retention in judicial or other government office. Political contributions in initiative and referendum elections are not included. For purposes of this Rule, the term "political contribution" does not include uncompensated services.

[3] Subject to the exceptions below, (i) the term "government legal engagement" denotes any engagement to provide legal services that a public official has the direct or indirect power to award; and (ii) the term "appointment by a judge" denotes an appointment to a position such as referee, commissioner, special master, receiver, guardian or other similar position that is made by a judge. Those terms do not, however, include (a) substantially uncompensated services; (b) engagements or appointments made on the basis of experience, expertise, professional qualifications and cost following a request for proposal or other process that is free from influence based upon political contributions; and (c) engagements or appointments made on a rotational basis from a list compiled without regard to political contributions.

[4] The term "lawyer or law firm" includes a political action committee or other entity owned or controlled by a lawyer or law firm.

[5] Political contributions are for the purpose of obtaining or being considered for a government legal engagement or appointment by a judge if, but for the desire to be considered for the legal engagement or appointment, the lawyer or law firm would not have made or solicited the contributions. The purpose may be determined by an examination of the circumstances in which the contributions occur. For example, one or more contributions that in the aggregate are substantial in relation to other contributions by lawyers or law firms, made for the benefit of an official in a position to influence award of a government legal engagement, and followed by an award of the legal engagement to the contributing or soliciting lawyer or the lawyer's firm would support an inference that the purpose of the contributions was to obtain the engagement, absent other factors that weigh against existence of the proscribed purpose. Those factors may include among others that the contribution or solicitation was made to further a political, social, or economic interest or because of an existing personal, family, or professional relationship with a candidate.

[6] If a lawyer makes or solicits a political contribution under circumstances that constitute bribery or another crime, Rule 8.4 (b) is implicated.

## SUBCHAPTER VIII

## MAINTAINING THE INTEGRITY OF THE PROFESSION

**SCR 20:8.1 Bar admission and disciplinary matters.** An applicant for admission to the bar, or a lawyer in connection with a bar admission application or in connection with a disciplinary matter, shall not:

(a) knowingly make a false statement of material fact; or

(b) fail to disclose a fact necessary to correct a misapprehension known by the person to have arisen in the matter, or knowingly fail to respond to a lawful demand for information from an admissions or disciplinary authority, except that this rule does not require disclosure of information otherwise protected by SCR 20:1.6.

History: Sup. Ct. Order No. 04–07, 2007 WI 4, 293 Wis. 2d xv.

ABA Comment: [1] The duty imposed by this Rule extends to persons seeking admission to the bar as well as to lawyers. Hence, if a person makes a material false statement in connection with an application for admission, it may be the basis for subsequent disciplinary action if the person is admitted, and in any event may be relevant in a subsequent admission application. The duty imposed by this Rule applies to a lawyer's own admission or discipline as well as that of others. Thus, it is a separate professional offense for a lawyer to knowingly make a misrepresentation or omission