

1 Rule 7.2. Advertising.

2 (a) Subject to the requirements of Rules 7.1 and 7.3, a lawyer may advertise
3 services ~~through public media, such as a telephone directory, legal directory,~~
4 ~~newspaper or other periodical, outdoor advertising, radio or television, or~~ through written
5 ~~or,~~ recorded or electronic communication, including public media.

6 ~~(b) A copy or recording of an advertisement or written communication shall be kept~~
7 ~~for two years after its last dissemination along with a record of when and where it was~~
8 ~~used.~~

9 ~~(c) (b)~~ A lawyer shall not give anything of value to a person for recommending the
10 lawyer's services;² except that a lawyer may:

11 (b)(1) pay the reasonable costs of ~~advertising~~ advertisements or ~~written~~
12 ~~communications~~ permitted by this Rule;

13 (b)(2) pay the usual charges of a ~~lawyer referral service~~ legal service plan or a lawyer
14 ~~referral service, or other legal service organization;~~

15 (b)(3) pay for a law practice in ~~compliance with the Rules of Professional Conduct,~~
16 ~~including Rule 1.17; or~~ accordance with Rule 1.17; or

17 (b)(4) divide a fee with another lawyer as permitted by Rule 1.5(e).

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

20 Comment

21 [1] To assist the public in obtaining legal services, lawyers should be allowed to
22 make known their services not only through reputation but also through organized
23 information campaigns in the form of advertising. Advertising involves an active quest
24 for clients, contrary to the tradition that a lawyer should not seek clientele. However, the
25 public's need to know about legal services can be fulfilled in part through advertising.
26 This need is particularly acute in the case of persons of moderate means who have not
27 made extensive use of legal services. The interest in expanding public information
28 about legal services ought to prevail over considerations of tradition. Nevertheless,
29 advertising by lawyers entails the risk of practices that are misleading or overreaching.

30 [2] This Rule permits public dissemination of information concerning a lawyer's
31 name or firm name, address and telephone number; the kinds of services the lawyer will

32 undertake; the basis on which the lawyer's fees are determined, including prices for
33 specific services and payment and credit arrangements; a lawyer's foreign language
34 ability; names of references and, with their consent, names of clients regularly
35 represented; and other information that might invite the attention of those seeking legal
36 assistance.

37 [3] Questions of effectiveness and taste in advertising are matters of speculation
38 and subjective judgment. Some jurisdictions have had extensive prohibitions against
39 television advertising, against advertising going beyond specified facts about a lawyer,
40 or against "undignified" advertising. Television is now one of the most powerful media
41 for getting information to the public, particularly persons of low and moderate income;
42 prohibiting television advertising, therefore, would impede the flow of information about
43 legal services to many sectors of the public. Limiting the information that may be
44 advertised has a similar effect and assumes that the Bar can accurately forecast the
45 kind of information that the public would regard as relevant. Similarly, electronic media,
46 such as the Internet, can be an important source of information about legal services,
47 and lawful communication by electronic mail is permitted by this Rule. But see Rule
48 7.3(a) for the prohibition against the solicitation of a prospective client through a real-
49 time electronic exchange that is not initiated by the prospective client.

50 [4] Neither this Rule nor Rule 7.43 prohibits communications authorized by law,
51 such as notice to members of a class in class action litigation.

52 Record of Advertising

53 ~~Paragraph (b) requires that a record of the content and use of advertising be kept in~~
54 ~~order to facilitate enforcement of this Rule. It does not require that advertising be~~
55 ~~subject to review prior to dissemination. Such a requirement would be burdensome and~~
56 ~~expensive relative to its possible benefits, and may be of doubtful constitutionality.~~

57 Paying Others to Recommend a Lawyer

58 [5] ~~A lawyer is allowed~~ Lawyers are not permitted to pay others for channeling
59 professional work. Paragraph (b)(1), however, allows a lawyer to pay for advertising
60 and ~~written communications permitted by this Rule, to pay for a law practice in~~
61 ~~compliance with the Rules of Professional Conduct, including Rule 1.17, and to pay~~
62 ~~referral fees permitted by Rule 1.5(e), even if such fees are paid on a fee-per-case~~

63 ~~basis. Fees may not be paid to a lawyer referral service or to a legal services~~
64 ~~organization on a fee-per-case basis. This restriction does not prevent an organization~~
65 ~~or person other than the lawyer from advertising or recommending the lawyer's~~
66 ~~services. Thus, a legal aid agency or prepaid legal services plan may pay to advertise~~
67 ~~legal services provided under its auspices. Likewise, a lawyer may participate in lawyer~~
68 ~~referral programs and pay the usual fees charged by such programs. Paragraph (c)~~
69 ~~does not prohibit paying regular compensation to an assistant, such as a secretary, to~~
70 ~~prepare communications permitted by this Rule, including the costs of print directory~~
71 ~~listings, on-line directory listings, newspaper ads, television and radio airtime, domain-~~
72 ~~name registrations, sponsorship fees, banner ads and group advertising. A lawyer may~~
73 ~~compensate employees, agents and vendors who are engaged to provide marketing or~~
74 ~~client-development services, such as publicists, public-relations personnel, business-~~
75 ~~development staff and website designers. See Rule 5.3 for the duties of lawyers and~~
76 ~~law firms with respect to the conduct of nonlawyers who prepare marketing materials for~~
77 ~~them.~~

78 [6] A lawyer may pay the usual charges of a legal service plan or a lawyer referral
79 service. A legal service plan is a prepaid or group legal service plan or a similar
80 delivery system that assists prospective clients to secure legal representation. A lawyer
81 referral service, on the other hand, is an organization that holds itself out to the public to
82 provide referrals to lawyers with appropriate experience in the subject matter of the
83 representation.

84 [7] A lawyer who accepts assignments or referral from a legal service plan or
85 referrals from a lawyer referral service must act reasonably to assure that the activities
86 of the plan or service are compatible with the lawyer's professional obligations. See
87 Rule 5.3. Legal service plans and lawyer referral services may communicate with
88 prospective clients, but such communication must be in conformity with these Rules.
89 Thus, advertising must not be false or misleading, as would be the case if the
90 communications of a group advertising program or a group legal services plan would
91 mislead prospective clients to think that it was a lawyer referral service sponsored by a
92 state agency or bar association. Nor could the lawyer allow in-person, telephonic, or
93 real-time contacts that would violate Rule 7.3.

94 [7a] Utah Rule 7.2(b)(2) differs from the ABA Model Rule by permitting a lawyer to
95 pay the usual charges of any lawyer referral service. This is not limited to not-for-profit
96 services. Comment [6] to the Utah rule is modified accordingly.

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