

1 **Rule 7.3. ~~Direct Contact with Prospective~~ Solicitation of Clients.**

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

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

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

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

13 (b)(1) the ~~prospective client~~ target of the solicitation has made known to the
14 lawyer a desire not to be solicited by the lawyer; or

15 (b)(2) the solicitation involves coercion, duress or harassment.

16 (c) Every written, recorded or electronic communication from a lawyer
17 soliciting professional employment ~~from a prospective client~~ anyone known to
18 be in need of legal services in a particular matter shall include the words
19 "Advertising Material" on the outside envelope, if any, and at the beginning of
20 any recorded or electronic communication, unless the recipient of the
21 communication is a person specified in paragraphs (a)(1) or (a)(2). For the
22 purposes of this subsection, "written communication" does not include
23 advertisement through public media, including but not limited to a telephone
24 directory, legal directory, newspaper or other periodical, outdoor advertising,
25 radio, ~~or television~~ or webpage.

26 (d) Notwithstanding the prohibitions in paragraph (a), a lawyer may
27 participate with a prepaid or group legal service plan operated by an
28 organization not owned or directed by the lawyer that uses in-person or other

29 real-time communication to solicit memberships or subscriptions for the plan
30 from persons who are not known to need legal services in a particular matter
31 covered by the plan.

32 Comment

33 [1] A solicitation is a targeted communication initiated by the lawyer that is
34 directed to a specific person and that offers to provide, or can reasonably be
35 understood as offering to provide, legal services. In contrast, a lawyer's
36 communication typically does not constitute a solicitation if it is directed to the
37 general public, such as through a billboard, an Internet banner advertisement,
38 a website or a television commercial, or if it is in response to a request for
39 information or is automatically generated in response to Internet searches.

40 ~~[1]~~ [2] There is a potential for abuse inherent in when a solicitation involves
41 direct in-person, or other real-time communication live telephone or real-time
42 electronic contact by a lawyer with a prospective client someone known to
43 need legal services. These forms of contact between a lawyer and a
44 prospective client subject the layperson a person to the private importuning of
45 the trained advocate in a direct interpersonal encounter. The prospective
46 client person, who may already feel overwhelmed by the circumstances giving
47 rise to the need for legal services, may find it difficult fully to evaluate all
48 available alternatives with reasoned judgment and appropriate self-interest in
49 the face of the lawyer's presence and insistence upon being retained
50 immediately. The situation is fraught with the possibility of undue influence,
51 intimidation, and over-reaching.

52 ~~[1a] "Real-time communication" means telephonic, electronic, radio, wire,~~
53 ~~wireless or other similar communication directed to a specific recipient and~~
54 ~~characterized by the immediacy and interactivity of response between~~
55 ~~individuals, such as that provided through standard telephone connections~~
56 ~~and Internet "chat rooms." This Comment is not included in the ABA Model~~

57 Rule 7.3, and is added to clarify that the definition of real-time communication
58 is broad enough to cover real-time communication of all types.

59 ~~[2] The [3] This~~ potential for abuse inherent in direct in-person, ~~and other~~
60 ~~real-time live telephone or real-time electronic~~ solicitation of prospective
61 clients justifies its prohibition, particularly since lawyers' advertising and written
62 and recorded communication permitted under Rule 7.2 offer have alternative
63 means of conveying necessary information to those who may be in need of
64 legal services. ~~Advertising and written and recorded~~ In particular,
65 communications that may can be mailed or autodialed transmitted by email or
66 other electronic means that do not involve real-time contact and do not violate
67 other laws governing solicitations. These forms of communications and
68 solicitations make it possible for a ~~prospective client~~ the public to be informed
69 about the need for legal services, and about the qualifications of available
70 lawyers and law firms, without subjecting the ~~prospective client~~ public to direct
71 in-person, ~~or other real-time live telephone or real-time electronic~~ persuasion
72 that may overwhelm the client's a person's judgment.

73 ~~[3] [4]~~ The use of general advertising and written, recorded or electronic
74 communications to transmit information from lawyer to ~~prospective client~~ the
75 public, rather than direct in-person or other real-time communications, will
76 help to ensure that the information flows cleanly as well as freely. The
77 contents of advertisements and communications permitted under Rule 7.2 can
78 be permanently recorded so that they cannot be disputed and may be shared
79 with others who know the lawyer. This potential for informal review is itself
80 likely to help guard against statements and claims that might constitute false
81 and misleading communications in violation of Rule 7.1. The contents of direct
82 in-person, ~~or other real-time communication between a lawyer and a~~
83 ~~prospective client~~ live telephone or real-time electronic contact can be
84 disputed and may not be subject to third-party scrutiny. Consequently, they

85 are much more likely to approach (and occasionally cross) the dividing line
86 between accurate representations and those that are false and misleading.

87 ~~[4]~~[5] There is far less likelihood that a lawyer would engage in abusive
88 practices against ~~an individual who is a~~ former client, or a person with whom
89 the lawyer has a close personal or family relationship, or in situations in which
90 the lawyer is motivated by considerations other than the lawyer's pecuniary
91 gain. Nor is there a serious potential for abuse when the person contacted is a
92 lawyer. Consequently, the general prohibition in Rule 7.3(a) and the
93 requirements of Rule 7.3(c) are not applicable in those situations. Also,
94 paragraph (a) is not intended to prohibit a lawyer from participating in
95 constitutionally protected activities of public or charitable legal-service
96 organizations or *bona fide* political, social, civic, fraternal, employee or trade
97 organizations whose purposes include providing or recommending legal
98 services to ~~its~~their members or beneficiaries.

99 ~~[5]~~[6] But even permitted forms of solicitation can be abused. Thus, any
100 solicitation which contains information that is false or misleading within the
101 meaning of Rule 7.1, that involves coercion, duress or harassment within the
102 meaning of Rule 7.3(b)(2), or that involves contact with ~~a prospective client~~
103 someone who has made known to the lawyer a desire not to be solicited by
104 the lawyer within the meaning of Rule 7.3(b)(1) is prohibited. Moreover, if after
105 sending a letter or other communication to ~~a client~~ as permitted by Rule 7.2
106 the lawyer receives no response, any further effort to communicate with the
107 ~~prospective client~~ recipient of the communication may violate the provisions of
108 Rule 7.3(b).

109 ~~[6]~~[7] This Rule is not intended to prohibit a lawyer from contacting
110 representatives of organizations or groups that may be interested in
111 establishing a group or prepaid legal plan for their members, insureds,
112 beneficiaries or other third parties for the purpose of informing such entities of

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

123 ~~[7]~~[8] The requirement in Rule 7.3(c) that certain communications be
124 marked "Advertising Material" does not apply to communications sent in
125 response to requests of potential clients or their spokespersons or sponsors.
126 General announcements by lawyers, including changes in personnel or office
127 location, do not constitute communications soliciting professional employment
128 from a client known to be in need of legal services within the meaning of this
129 Rule.

130 ~~[7a]~~[8a] Utah Rule 7.3(c) requires the words "Advertising Material" to be
131 marked on the outside of an envelope, if any, and at the beginning of any
132 recorded or electronic communication, but not at the end as the ABA Model
133 Rule requires. Lawyer solicitations in public media that regularly contain
134 advertisements do not need the " Advertising Material" notice because
135 persons who view or hear such media usually recognize the nature of the
136 communications.

137 ~~[8]~~[9] Paragraph (d) of this Rule permits a lawyer to participate with an
138 organization that uses personal contact to solicit members for its group or
139 prepaid legal service plan, provided that the personal contact is not
140 undertaken by any lawyer who would be a provider of legal services through

141 the plan. The organization must not be owned by or directed (whether as
142 manager or otherwise) by any lawyer or law firm that participates in the plan.
143 For example, paragraph (d) would not permit a lawyer to create an
144 organization controlled directly or indirectly by the lawyer and use the
145 organization for the in-person or telephone, live person-to-person contacts or
146 other real-time electronic solicitation of legal employment of the lawyer
147 through memberships in the plan or otherwise. The communication permitted
148 by these organizations also must not be directed to a person known to need
149 legal services in a particular matter, but is to be designed to inform potential
150 plan members generally of another means of affordable legal services.
151 Lawyers who participate in a legal service plan must reasonably assure that
152 the plan sponsors are in compliance with Rules 7.1, 7.2 and 7.3(b). See Rule
153 8.4(a).