

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~~ contact ~~or other real-time~~
3 ~~communication~~ solicit professional employment from a prospective client when a significant motive for the
4 lawyer's doing so is the lawyer's pecuniary gain, unless the person contacted:

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

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

7 (a)(3) is unable to make personal contact with a lawyer and the lawyer's contact with the prospective
8 client has been initiated by a third party on behalf of the prospective client.

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

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

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

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

22 (d) Notwithstanding the prohibitions in paragraph (a), a lawyer may participate with a prepaid or group
23 legal service plan operated by an organization not owned or directed by the lawyer that uses in-person or
24 other real-time communication to solicit memberships or subscriptions for the plan from persons who are
25 not known to need legal services in a particular matter covered by the plan.

26 Comment

27 [1] A solicitation is a targeted communication initiated by the lawyer that is directed to a specific
28 person and that offers to provide, or can reasonably be understood as offering to provide, legal services.
29 In contrast, a lawyer's communication typically does not constitute a solicitation if it is directed to the
30 general public, such as through a billboard, an Internet banner advertisement, a website or a television
31 commercial, or if it is in response to a request for information or is automatically generated in response to
32 Internet searches.

33 ~~[1][2]~~ There is a potential for abuse ~~inherent in when a solicitation involves~~ direct in-person, ~~or other~~
34 ~~real-time communication-live telephone or real-time electronic contact~~ by a lawyer with ~~a prospective~~
35 ~~client someone known to need legal services~~. These forms of contact ~~between a lawyer and a~~
36 ~~prospective client~~ subject ~~the layperson a person~~ to the private importuning of the trained advocate in a
37 direct interpersonal encounter. The ~~prospective client person~~, who may already feel overwhelmed by the

38 circumstances giving rise to the need for legal services, may find it difficult fully to evaluate all available
39 alternatives with reasoned judgment and appropriate self-interest in the face of the lawyer's presence and
40 insistence upon being retained immediately. The situation is fraught with the possibility of undue
41 influence, intimidation, and over-reaching.

42 ~~[1a] "Real-time communication" means telephonic, electronic, radio, wire, wireless or other similar~~
43 ~~communication directed to a specific recipient and characterized by the immediacy and interactivity of~~
44 ~~response between individuals, such as that provided through standard telephone connections and~~
45 ~~Internet "chat rooms." This Comment is not included in the ABA Model Rule 7.3, and is added to clarify~~
46 ~~that the definition of real-time communication is broad enough to cover real-time communication of all~~
47 ~~types.~~

48 ~~[2] The [3] This~~ potential for abuse inherent in direct in-person, ~~and other real-time live telephone or~~
49 ~~real-time electronic~~ solicitation ~~of prospective clients~~ justifies its prohibition, particularly since lawyers
50 ~~advertising and written and recorded communication permitted under Rule 7.2 offer have~~ alternative
51 means of conveying necessary information to those who may be in need of legal services. ~~Advertising~~
52 ~~and written and recorded In particular,~~ communications ~~that may can~~ be mailed or ~~autodialed transmitted~~
53 ~~by email or other electronic means that do not involve real-time contact and do not violate other laws~~
54 ~~governing solicitations. These forms of communications and solicitations~~ make it possible for a
55 ~~prospective client the public~~ to be informed about the need for legal services, and about the qualifications
56 of available lawyers and law firms, without subjecting the ~~prospective client public~~ to direct in-person, ~~or~~
57 ~~other real-time live telephone or real-time electronic~~ persuasion that may overwhelm ~~the client's a~~
58 ~~person's~~ judgment.

59 ~~[3] [4]~~ The use of general advertising and written, recorded or electronic communications to transmit
60 information from lawyer to ~~prospective client the public~~, rather than direct in-person or other real-time
61 communications, will help to ensure that the information flows cleanly as well as freely. The contents of
62 advertisements and communications permitted under Rule 7.2 can be permanently recorded so that they
63 cannot be disputed and may be shared with others who know the lawyer. This potential for informal
64 review is itself likely to help guard against statements and claims that might constitute false and
65 misleading communications in violation of Rule 7.1. The contents of direct in-person, ~~or other real-time~~
66 ~~communication between a lawyer and a prospective client live telephone or real-time electronic contact~~
67 can be disputed and may not be subject to third-party scrutiny. Consequently, they are much more likely
68 to approach (and occasionally cross) the dividing line between accurate representations and those that
69 are false and misleading.

70 ~~[4] [5]~~ There is far less likelihood that a lawyer would engage in abusive practices against ~~an~~
71 ~~individual who is~~ a former client, or a person with whom the lawyer has a close personal or family
72 relationship, or where the lawyer has been asked by a third party to contact a prospective client who is
73 unable to contact a lawyer, for example when the prospective client is incarcerated and is unable to place
74 a call, or is mentally incapacitated and unable to appreciate the need for legal counsel. Nor is there a

75 serious potential for abuse in situations where the lawyer is motivated by considerations other than the
76 lawyer's pecuniary gain, or when the person contacted is also a lawyer. This rule is not intended to
77 prohibit a lawyer from applying for employment with an entity, for example, as in-house counsel. ~~or in~~
78 situations in which the lawyer is motivated by considerations other than the lawyer's pecuniary gain. Nor
79 is there a serious potential for abuse when the person contacted is a lawyer. Consequently, the general
80 prohibition in Rule 7.3(a) and the requirements of Rule 7.3(c) are not applicable in those situations. Also,
81 paragraph (a) is not intended to prohibit a lawyer from participating in constitutionally protected activities
82 of public or charitable legal-service organizations or *bona fide* political, social, civic, fraternal, employee or
83 trade organizations whose purposes include providing or recommending legal services to ~~its~~their
84 members or beneficiaries.

85 [5a] Utah's Rule 7.3(a) differs from the ABA Model Rule by authorizing in-person or other real-time
86 contact by a lawyer with a prospective client when that prospective client is unable to make personal
87 contact with a lawyer, but a third party initiates contact with a lawyer on behalf of the prospective client
88 and the lawyer then contacts the prospective client.

89 ~~[5]-[6]~~ But even permitted forms of solicitation can be abused. Thus, any solicitation which contains
90 information that is false or misleading within the meaning of Rule 7.1, that involves coercion, duress or
91 harassment within the meaning of Rule 7.3(b)(2), or that involves contact with ~~a prospective client~~
92 someone who has made known to the lawyer a desire not to be solicited by the lawyer within the meaning
93 of Rule 7.3(b)(1) is prohibited. Moreover, if after sending a letter or other communication ~~to a client~~ as
94 permitted by Rule 7.2 the lawyer receives no response, any further effort to communicate with the
95 ~~prospective client recipient of the communication~~ may violate the provisions of Rule 7.3(b).

96 ~~[6]-[7]~~ This Rule is not intended to prohibit a lawyer from contacting representatives of organizations
97 or groups that may be interested in establishing a group or prepaid legal plan for their members, insureds,
98 beneficiaries or other third parties for the purpose of informing such entities of the availability of and the
99 details concerning the plan or arrangement which the lawyer or lawyer's firm is willing to offer. This form
100 of communication is not directed to ~~a prospective client~~ people who are seeking legal services for
101 themselves. Rather, it is usually addressed to an individual acting in a fiduciary capacity seeking a
102 supplier of legal services for others who may, if they choose, become prospective clients of the lawyer.
103 Under these circumstances, the activity which the lawyer undertakes in communicating with such
104 representatives and the type of information transmitted to the individual are functionally similar to and
105 serve the same purpose as advertising permitted under Rule 7.2.

106 ~~[7]-[8]~~ The requirement in Rule 7.3(c) that certain communications be marked "Advertising Material"
107 does not apply to communications sent in response to requests of potential clients or their spokespersons
108 or sponsors. General announcements by lawyers, including changes in personnel or office location, do
109 not constitute communications soliciting professional employment from a client known to be in need of
110 legal services within the meaning of this Rule.

111 | ~~[7a]~~ ~~[8a]~~ Utah Rule 7.3(c) requires the words "Advertising Material" to be marked on the outside of an
112 | envelope, if any, and at the beginning of any recorded or electronic communication, but not at the end as
113 | the ABA Model Rule requires. Lawyer solicitations in public media that regularly contain advertisements
114 | do not need the " Advertising Material" notice because persons who view or hear such media usually
115 | recognize the nature of the communications.

116 | ~~[8]~~ ~~[9]~~ Paragraph (d) of this Rule permits a lawyer to participate with an organization that uses
117 | personal contact to solicit members for its group or prepaid legal service plan, provided that the personal
118 | contact is not undertaken by any lawyer who would be a provider of legal services through the plan. The
119 | organization must not be owned by or directed (whether as manager or otherwise) by any lawyer or law
120 | firm that participates in the plan. For example, paragraph (d) would not permit a lawyer to create an
121 | organization controlled directly or indirectly by the lawyer and use the organization for the in-person or
122 | telephone, live person-to-person contacts or other real-time electronic solicitation of legal employment of
123 | the lawyer through memberships in the plan or otherwise. The communication permitted by these
124 | organizations also must not be directed to a person known to need legal services in a particular matter,
125 | but is to be designed to inform potential plan members generally of another means of affordable legal
126 | services. Lawyers who participate in a legal service plan must reasonably assure that the plan sponsors
127 | are in compliance with Rules 7.1, 7.2 and 7.3(b). See Rule 8.4(a).

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