Rule 7.1. Communications Concerning a Lawyer’s Services.

(a) 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 or unreasonable expectation about results
the lawyer can achieve or has achieved; or

  (c) contains a testimonial or endorsement that violates any portion of this Rule.

(b) A lawyer shall not interact with a prospective client in a manner that involves
coercion, duress, or harassment.

Comments

[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] By way of example, this Rule permits the following, so long as they are not false or
misleading: public dissemination of information concerning a lawyer’s name or firm
name, address, email address, website, and telephone number; the kinds of services the
lawyer will undertake; the basis on which the lawyer’s fees are determined, including
prices for specific services and payment and credit arrangements; the use of actors or
dramatizations to portray the lawyer, law firm, client, or events; the courts or
jurisdictions where the lawyer is permitted to practice, and other information that
might invite the attention of those seeking legal assistance.

[4] 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 the public.

[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. [5] A lawyer can
communicate practice areas and can state that he or she “specializes” in a field based on
experience, training, and education, subject to the “false or misleading” standard set
forth in this Rule. A lawyer shall not state or imply that the lawyer is certified as a
specialist in a particular field unless the lawyer has been certified as a specialist by an
objective entity and the name of the entity is clearly identified in the communication.

[6] In order to avoid coercion, duress, or harassment, a lawyer should proceed with
cautions when initiating contact with someone in need of legal services, especially when
the contact is “live,” whether that be in-person, face-to-face, live telephone and other
real-time visual or auditory person-to-person communications, where the person is
subject to a direct personal encounter without time for reflection.

[7] Firm names, letterhead and professional designations are communications
concerning a lawyer’s services. A firm may be designated by the names of all or some of
its current members, by the names of deceased or retired members where there has
been a succession in the firm’s identity or by a trade name if it is not false or misleading.
A lawyer or law firm also may be designated by a distinctive website address, social
media username or comparable professional designation that is not misleading. A law
firm name or designation is misleading if it implies a connection with a government
agency, with a deceased lawyer who was not a former member of the firm, with a
lawyer not associated with the firm or a predecessor firm, with a nonlawyer or with a
public or charitable legal services organization. If a firm uses a trade name that includes
a geographical name such as “Springfield Legal Clinic,” an express statement
explaining that it is not a public legal aid organization may be required to avoid a
misleading implication.

[8] A law firm with offices in more than one jurisdiction may use the same name or
other professional designation in each jurisdiction.

[9] Lawyers may not imply or hold themselves out as practicing together in one firm
when they are not a firm, as defined in Rule 1.0(d), because to do so would be false and
misleading.

[10] It is misleading to use the name of a lawyer holding public office in the name of a
law firm, or in communications on the law firm’s behalf, during any substantial period
in which the lawyer is not practicing with the firm. A firm may continue to use in its
firm name the name of a lawyer who is serving in Utah’s part-time legislature as long as
that lawyer is still associated with the firm.

[11] See Rules 5.3 (duties of lawyers and law firms with respect to the conduct of non-
lawyers); Rule 8.4(a) (duty to avoid violating the Rules through the acts of another); and
Rule 8.4(e) (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).

[4a12] The Utah Rule is different. This Rule differs from the ABA Model Rule.
Subsections (b), (c), and (cd) are added to the Rule to give further guidance as to which
communications are false or misleading. Additional changes have been made to the comments.
Rule 7.2. Advertising.

lawyer may pay the reasonable cost of advertising permitted by these Rules and
may pay the usual charges of a lawyer referral service or other legal service plan.

Comment

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

[2] This Rule permits public dissemination of information concerning a lawyer's
name or firm name, address, email address, website and telephone number; the
kinds of services the lawyer will undertake; the basis on which the lawyer's fees are
determined, including prices for specific services and payment and credit
arrangements; a lawyer's foreign language ability; names of references and, with
their consent, names of clients regularly represented; and other information that
might invite the attention of those seeking legal assistance.

[3] Questions of effectiveness and taste in advertising are matters of speculation and
subjective judgment. Some jurisdictions have had extensive prohibitions against
television and other forms of advertising, against advertising going beyond
specified facts about a lawyer or against "undignified" advertising. Television, the
Internet and other forms of electronic communication are now among the most
powerful media for getting information to the public, particularly persons of low
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and moderate income; prohibiting television, Internet, and other forms of
electronic advertising, therefore, would impede the flow of information about legal
services to many sectors of the public. Limiting the information that may be
advertised has a similar effect and assumes that the Bar can accurately forecast the
kind of information that the public would regard as relevant. But see Rule 7.3(a) for
the prohibition against a solicitation through a real-time electronic exchange
initiated by the lawyer.

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

Paying Others to Recommend a Lawyer

[5] Except as permitted by Paragraph (f), lawyers are not permitted to pay others
for recommending the lawyer’s services or for channeling professional work
in a manner that violates Rule 7.3. A communication contains a recommendation if
it endorses or vouches for a lawyer’s credentials, abilities, competence, character, or
other professional qualities. Paragraph (f), however, allows a lawyer to pay for
advertising and communications permitted by this Rule, including the costs of print
directory listings, on-line directory listings, newspaper ads, television and radio
airtime, domain-name registrations, sponsorship fees, Internet-based
advertisements and group advertising. A lawyer may compensate employees,
agents and vendors who are engaged to provide marketing or client-development
services, such as publicists, public-relations personnel, business-development staff
and website designers. Moreover, a lawyer may pay others for generating client
leads, such as Internet-based client leads, as long as the lead generator does not
recommend the lawyer, and any payment to the lead generator is consistent with the
lawyer’s obligations under these rules. To comply with Rule 7.1, a lawyer must not
pay a lead generator that states, implies, or creates a reasonable impression that it is
recommending the lawyer, is making the referral without payment from the lawyer,
or has analyzed a person’s legal problems when determining which lawyer should
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receive the referral. See Rule 5.3 (duties of lawyers and law firms with respect to the
court of non-lawyers); Rule 8.4(a) (duty to avoid violating the Rules through the acts of another).

[6] A lawyer may pay the usual charges of a legal service plan or a 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 an organization that holds itself out to the public to provide referrals to lawyers with appropriate experience in the subject matter of the representation. No fee generating referral may be made to any lawyer or firm that has an ownership interest in, or who operates or is employed by, the lawyer referral service, or who is associated with a firm that has an ownership interest in, or operates or is employed by, the lawyer referral service.

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

[8] For the disciplinary authority and choice of law provisions applicable to advertising, see Rule 8.5.

[8a] This Rule differs from the ABA Model Rule in that it defines “advertisement” and places some limitations on advertisements. Utah Rule 7.2(b)(2) also differs from the ABA Model Rule by permitting a lawyer to pay the usual charges of any lawyer
referral service. This is not limited to not-for-profit services. Comment [6] to the Utah rule is modified accordingly.

Reserved.
Rule 7.3. Solicitation of 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:

(a)(1) is a lawyer;

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

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

(b) A lawyer shall not solicit professional employment 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:

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

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

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

(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
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by the lawyer that uses in-person or other real-time communication 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] A solicitation is a targeted communication initiated by the lawyer that is directed to a specific person and that offers to provide, or can reasonably be understood as offering to provide, legal services. In contrast, a lawyer’s communication typically does not constitute a solicitation if it is directed to the general public, such as through a billboard, an Internet banner advertisement, a website or a television commercial, or if it is in response to a request for information or is automatically generated in response to Internet searches.

[2] There is a potential for abuse when a solicitation involves direct in-person, live telephone or real-time electronic contact by a lawyer with someone known to need legal services. These forms of contact subject a person to the private importuning of the trained advocate in a direct interpersonal encounter. The person, who may already feel overwhelmed by the circumstances giving rise to the need for legal services, may find it difficult fully to evaluate all available alternatives with reasoned judgment and appropriate self-interest in the face of the lawyer’s presence and insistence upon being retained immediately. The situation is fraught with the possibility of undue influence, intimidation, and over-reaching.

[3] This potential for abuse inherent in direct in-person, live telephone or real-time electronic solicitation justifies its prohibition, particularly since lawyers have alternative means of conveying necessary information to those who may be in need of legal services. In particular, communications can be mailed or transmitted by email or other electronic means that do not involve real-time contact and do not violate other laws governing solicitations. These forms of communications and solicitations make it possible for the public to be informed about the need for legal services, and about the qualifications of available lawyers and law firms, without subjecting the public to direct
in-person, live telephone or real-time electronic persuasion that may overwhelm a
person’s judgment.

[4] The use of general advertising and written, recorded or electronic communications
to transmit information from lawyer to the public, rather than direct in-person or other
real-time communications, will help to ensure 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 contact can be disputed and may not be subject to third-party
scrutiny. Consequently, they are much more likely to approach (and occasionally cross)
the dividing line between accurate representations and those that are false and
misleading.

[5] There is far less likelihood that a lawyer would engage in abusive practices against a
former client, or a person with whom the lawyer has a close personal or family
relationship, or where the lawyer has been asked by a third party to contact a
prospective client who is unable to contact a lawyer, for example when the prospective
client is incarcerated and is unable to place a call, or is mentally incapacitated and
unable to appreciate the need for legal counsel. Nor is there a serious potential for abuse
in situations where the lawyer is motivated by considerations other than the lawyer’s
pecuniary gain, or when the person contacted is also a lawyer. This rule is not intended
to prohibit a lawyer from applying for employment with an entity, for example, as in-
house counsel. 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 their members or beneficiaries.

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

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

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

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

Paragraph (d) of this Rule permits a lawyer to participate with an organization that 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, live person-to-person contacts or other real-time electronic 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). Reserved.
Rule 7.4. Communication of Fields of Practice.

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

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

(c) A lawyer engaged in Admiralty practice may use the designation "Admiralty," "Proctor in Admiralty," or 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:

(d)(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

(d)(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.
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. Reserved.
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. Reserved.

(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 or retired 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 not 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 or retired 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 who has not been 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.