

Disciplinary Rules and Procedures Committee
Meeting of June 11, 2021
Hybrid Meeting/ South Carolina

MINUTES

Chair Harold Michael Bagley called the meeting to order at 2:30 p.m.

Attendance:

Committee members: Harold Michael Bagley, R. Gary Spencer (virtual), Patrick H. Head, R. Javoyné Hicks, Seth D. Kirschenbaum (virtual), David N. Lefkowitz (virtual), David S. Lipscomb, Patrick E. Longan (virtual), Jabu M. Sengova, and Patrick Wheale (virtual).

Staff: Paula Frederick, Jenny K. Mittelman (virtual), William D. NeSmith, III, Leigh Burgess, and Kathya S. Jackson.

Guests: Supreme Court Justice Peterson and Elizabeth Davenport (virtual).

Approval of Minutes:

The Committee approved the Minutes from the March 19, 2021 meeting.

Report:

Paula Frederick provided the Committee with the current status of previously amended rules.

Action Item:

GRPC Part Seven Revisions

The Committee agreed to vote on the changes suggested by the subcommittee to create a proposal to circulate to membership for comments.

By unanimous vote, the Committee voted to accept the subcommittee's changes to Rules 7.1 and 7.2. A copy of the Rule as amended appears at the end of these minutes.

The motion to adopt a new Rule 7.6 failed (7-2).

The Committee would like to discuss the changes to Rule 7.3 further. The State Bar will provide the Committee with information regarding whether other states have a 30-day moratorium, and whether any states use it for divorce and criminal cases for further discussion at its next meeting.

The meeting adjourned at 4:16 p.m.

Redline version of Rule 7.1:

RULE 7.1: COMMUNICATIONS ~~CONCERNING~~CONCERNING A ~~LAWYER'S~~LAWYER'S SERVICES

~~a.~~ A lawyer shall not make a false or misleading communication about the lawyer or the lawyer's services. ~~By way of illustration, but not limitation, a~~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.

- ~~1. contains a material misrepresentation of fact or law or omits a fact necessary to make the statement considered as a whole not materially misleading;~~
- ~~2. 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 Georgia Rules of Professional Conduct or other law;~~
- ~~3. compares the lawyer's services with other lawyers' services unless the comparison can be factually substantiated;~~
- ~~4. fails to include the name of at least one lawyer responsible for its content; or~~
- ~~5. contains any information regarding contingent fees, and fails to conspicuously present the following disclaimer:~~

~~"Contingent attorneys' fees refers only to those fees charged by attorneys for their legal services. Such fees are not permitted in all types of cases. Court costs and other additional expenses of legal action usually must be paid by the client."~~

- ~~6. contains the language "no fee unless you win or collect" or any similar phrase and fails to conspicuously present the following disclaimer:~~

~~"No fee unless you win or collect" [or insert the similar language used in the communication] refers only to fees charged by the attorney. Court costs and other additional expenses of legal action usually must be paid by the client. Contingent fees are not permitted in all types of cases.~~

- ~~b. A public communication for which a lawyer has given value must be identified as such unless it is apparent from the context that it is such a communication.~~
- ~~c. A lawyer retains ultimate responsibility to insure that all communications concerning the lawyer or the lawyer's services comply with the Georgia Rules of Professional Conduct.~~

The maximum penalty for a violation of this rule is disbarment.

Comment

Information About Legal Services

[1] This ~~rule~~Rule governs ~~the content of~~ all communications about a ~~lawyer's~~lawyer's services, including ~~the various types of advertising permitted by Rules 7.3 through 7.5.~~ Whatever means are used to make known a ~~lawyer's~~lawyer's services, statements about them ~~should~~must be truthful.

~~[2] The prohibition in sub-paragraph (a)(2) of this Rule 7.1: Communications Concerning a Lawyer's Services of Misleading truthful statements that may create "unjustified expectations" are 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 misleading if a substantial likelihood exists 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. A truthful statement is also misleading if presented in a way that creates a substantial likelihood that a reasonable person would ordinarily preclude advertisements about results obtained believe the lawyer's communication requires that person to take further action when, in fact, no action is required.~~

~~[3] A communication that truthfully reports a lawyer's achievements on behalf of a client, such as the amount of a damage award or the lawyer's record in obtaining favorable verdicts, and advertisements containing client endorsements. Such information may create the 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 results can be obtained for others matters without reference to the specific factual and legal circumstances of each client's case. Similarly, an unsubstantiated claim about a lawyer's or law firm's services or fees, or an unsubstantiated comparison of the lawyer's or law firm's services or fees with those of other lawyers or law firms, may be misleading if presented with such specificity as would lead a reasonable person to conclude that the comparison or claim 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.~~

~~Affirmative Disclosure~~

~~[3] In general, the intrusion on the First Amendment right of commercial speech resulting from rationally based affirmative disclosure requirements is minimal, and is therefore a preferable form of regulation to absolute bans or other similar restrictions. For example, there is no significant interest in failing to include the name of at least one accountable attorney in all communications promoting the services of a lawyer or law firm as required by sub-paragraph (a)(4) of Rule 7.1: Communications Concerning a Lawyer's Services. Nor is there any substantial burden imposed as a result of the affirmative disclaimer requirement of sub-paragraph (a)(6) upon a lawyer who wishes to make a claim in the nature of "no fee unless you win." Indeed, the United States Supreme Court has specifically recognized that affirmative disclosure of a client's liability for costs and expenses of litigation may be required to prevent consumer confusion over the technical distinction between the meaning and effect of the use of such terms as "fees" and "costs" in an advertisement.~~

~~[4] Certain promotional communications of a lawyer may, as a result of content or circumstance, tend to mislead a consumer to mistakenly believe that the communication is something other than a form of promotional communication for which the lawyer has paid. Examples of such a communication might include advertisements for seminars on legal topics directed to the lay public when such seminars are sponsored by the lawyer, or a newsletter or~~

~~newspaper column which appears to inform or to educate about the law. Paragraph (b) of this Rule 7.1: Communications Concerning a Lawyer's Services would require affirmative disclosure that a lawyer has given value in order to generate these types of public communications if such is in fact the case.~~

~~Accountability~~

~~[5] Paragraph (c) makes explicit an advertising attorney's ultimate responsibility for all the lawyer's promotional communications and would suggest that review by the lawyer prior to dissemination is advisable if any doubts exist concerning conformity of the end product with these Rules. Although prior review by disciplinary authorities is not required by these Rules, lawyers are certainly encouraged to contact disciplinary authorities prior to authorizing a promotional communication if there are any doubts concerning either an interpretation of these Rules or their application to the communication.~~

[4] It is professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit or misrepresentation. Rule 8.4(a) (4). See also Rule 8.4(a)(6) for the prohibition against stating or implying an ability to improperly influence a government agency or official or to achieve results by means that violate the Rules of Professional Conduct or other law.

[5] 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 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.

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

[7] 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(c), because to do so would be false and misleading.

[8] It is misleading to use the name of a lawyer holding a 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 actively and regularly practicing with the firm.

Clean version of Rule 7.1:

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. Whatever means are used to make known a lawyer's services, statements about them must be truthful.

[2] Misleading truthful statements are 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 misleading if a substantial likelihood exists 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. A truthful statement is also misleading if presented in a way that creates a substantial likelihood that a reasonable person would believe the lawyer's communication requires that person to take further action when, in fact, no action is required.

[3] A communication 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 claim about a lawyer's or law firm's services or fees, or an unsubstantiated comparison of the lawyer's or law firm's services or fees with those of other lawyers or law firms, may be misleading if presented with such specificity as would lead a reasonable person to conclude that the comparison or claim 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] It is professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit or misrepresentation. Rule 8.4(a)(4). See also Rule 8.4(a)(6) for the prohibition against stating or implying an ability to improperly influence a government agency or official or to achieve results by means that violate the Rules of Professional Conduct or other law.

[5] 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 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.

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

[7] 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(c), because to do so would be false and misleading.

[8] It is misleading to use the name of a lawyer holding a 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 actively and regularly practicing with the firm.

Redline version of Rule 7.2

RULE 7.2: ~~ADVERTISING~~

- ~~a. Subject to the requirements of Rules 7.1 and 7.3, a lawyer may advertise services through:~~
- ~~1. public media, such as a telephone directory, legal directory, newspaper or other periodical;~~
 - ~~2. outdoor advertising;~~
 - ~~3. radio or television;~~
 - ~~4. written, electronic or recorded communication.~~

~~b. COMMUNICATIONS CONCERNING A copy or recording of an advertisement or communication shall be kept for two years after its last dissemination along with a record of when and where it was used.~~ LAWYER'S SERVICES: SPECIFIC RULES

- ~~b. Prominent disclosures. Any advertisement for legal services directed to potential clients in Georgia, or intended to solicit employment for delivery of any legal services in Georgia, must include prominent disclosures, clearly legible and capable of being read by the average person, if written, and clearly intelligible by an average person, if spoken aloud, of the following:~~

- ~~1. Disclosure of identity and physical location of attorney. Any advertisement shall include the name, physical location and telephone number of each lawyer or law firm who paid for the advertisement and who takes full personal responsibility for the advertisement. In disclosing the physical location, the responsible lawyer shall state the full address of the location of the principal bona fide office of each lawyer who is prominently identified pursuant to this paragraph. For the~~

~~purposes of this Rule, a bona fide office is defined as a physical location maintained by the lawyer or law firm from which the lawyer or law firm furnishes legal services on a regular and continuing basis. In the absence of a bona fide physical office, the lawyer shall prominently disclose the full address listed with the State Bar of Georgia or other Bar to which the lawyer is admitted. A lawyer who uses a referral service shall ensure that the service discloses the location of the lawyer's bona fide office, or the registered bar address, when a referral is made.~~

- ~~2. Disclosure of referral practice. If the lawyer or law firm will refer the majority of callers to other attorneys, that fact must be disclosed and the lawyer or law firm must comply with the provisions of Rule 7.3(c) regarding referral services.~~
- ~~3. Disclosure of spokespersons and portrayals. Any advertisement that includes a non-attorney spokesperson, portrayal of a lawyer by a non-lawyer, portrayal of a client by a non-client, or any paid testimonial or endorsement, shall include prominent disclosure of the use of a non-attorney spokesperson, portrayal of a lawyer by a non-lawyer, or of a client by a non-client.~~
- ~~4. Disclosures regarding fees. A lawyer or law firm advertising any fixed fee for specified legal services shall, at the time of fee publication, have available to the public a written statement clearly describing the scope of each advertised service, which statement shall be available to the client at the time of retainer for any such service.~~
- ~~5. Appearance of legal notices or pleadings. Any advertisement that includes any representation that resembles a legal pleading, notice, contract or other legal document shall include prominent disclosure that the document is an advertisement rather than a legal document.~~

~~The maximum penalty for a violation of this Rule is a public reprimand.~~

(a) A lawyer may communicate information regarding the lawyer's services through any media.

(b) A lawyer shall not compensate, give or promise 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 and reasonable fees or dues charged by a lawyer referral service, if the services

i. _____ does not engage in conduct that would violate the Rules if engaged in by a lawyer.

(3) pay the usual and reasonable fees or dues charged by a bar-operated non-profit referral service, including a fee which is calculated as a percentage of the legal fees earned by the lawyer to whom the service has referred a matter, provided such bar-operated non-profit lawyer referral service meets the following criteria:

i. _____ the lawyer referral service shall be operated 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.~~

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[2] in the public interest for the purpose of referring prospective clients to lawyers, pro bono and public service legal programs, and government, consumer or other agencies who can provide the assistance the clients need. Such organization shall file annually with the State Disciplinary Board a report showing its rules and regulations, its subscription charges, agreements with counsel, the number of lawyers participating and the names and addresses of the lawyers participating in the service;

ii. the sponsoring bar association for the lawyer referral service must be open to all lawyers licensed and eligible to practice in this state who maintain an office within the geographical area served, and who meet reasonable objectively determinable experience requirements established by the bar association;

iii. the combined fees charged by a lawyer and the lawyer referral service to a client referred by such service shall not exceed the total charges which the client would have paid had no service been involved; and

iv. a lawyer who is a member of the qualified lawyer referral service must maintain in force a policy of errors and omissions insurance in an amount no less than \$100,000 per occurrence and \$300,000 in the aggregate.

(4) pay the usual and reasonable fees to a qualified legal services plan or insurer providing legal services insurance as authorized by law to promote the use of the lawyer's services, the lawyer's partner or associates services so long as the communications of the organization are not false, fraudulent, deceptive or misleading;

(5) pay for a law practice in accordance with Rule 1.17;

(6) 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; and

(7) give nominal gifts as an expression of appreciation that are neither intended nor reasonably expected to be a form of compensation for recommending a lawyer's services.

(c) A lawyer may communicate the fact that the lawyer does or does not practice in particular fields of law. A lawyer who is a specialist in a particular field of law by experience, specialized training or education, or is certified by a recognized and bona fide professional entity, may communicate such specialty or certification so long as the state is not false or misleading.

(d) Any communication made under this Rule must include the name and contact information of at least one lawyer or law firm responsible for its content.

Comment

[1] This Rule permits public dissemination of information concerning a lawyer's lawyer's or law firm'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 lawyer's fees are determined, including prices for specific services and payment and credit arrangements; a lawyer's 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: Direct Contact with Prospective Clients prohibits communications authorized by law, such as notice to members of a class in class action litigation.~~

Record of Advertising

~~[5] Paragraph (b) requires that a record of the content and use of advertising be kept in order to facilitate enforcement of this Rule.~~

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Paying Others to Recommend a Lawyer

[2] Except as permitted under paragraphs (b)(1)-(b)(7), lawyers are not permitted to pay others for recommending the lawyer's services. A communication contains a recommendation if it endorses or vouches for a lawyer's credentials, abilities, competence, character, or other professional qualities. Directory listings and group advertisements that list lawyers by practice area, without more, do not constitute impermissible "recommendations."

[3] Paragraph (b)(1) 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, television and radio station employees or spokespersons and website designers.

[4] Paragraph (b)(7) permits lawyers to give nominal gifts as an expression of appreciation to a person for recommending the lawyer's services or referring a prospective client. The gift may not be more than a token item as might be given for holidays, or other ordinary social hospitality. A gift is prohibited if offered or given in consideration of any promise, agreement or understanding that such a gift would be forthcoming or that referrals would be made or encouraged in the future.

[5] 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, any payment to the lead generator is consistent with Rules 1.5(e) (division of fees) and 5.4 (professional independence of the lawyer), and the lead generator's communications are consistent with Rule 7.1 (communications concerning a lawyer's services). 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 receive the referral. See Comment [2] (definition of "recommendation"). See also Rule 5.3 (duties of lawyers and law firms with respect to the conduct of nonlawyers); Rule 8.4(a)(1) (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 people who seek 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. [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. 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.

[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.

Communications about Fields of Practice

[9] Paragraph (c) of this Rule permits a lawyer to communicate that the lawyer does or does not practice in particular areas of law. A lawyer is generally permitted to state that the lawyer “concentrates in” or is a “specialist,” practices a “specialty,” or “specializes in” particular fields based on the lawyer’s experience, specialized training or education, but such communications are subject to the “false and misleading” standard applied in Rule 7.1 to communications concerning a lawyer’s services.

[10] The Patent and Trademark Office has a long-established policy of designating lawyers practicing before the Office. The designation of Admiralty practice also has a long historical tradition associated with maritime commerce and the federal courts. A lawyer’s communications about these practice areas are not prohibited by this Rule.

Required Contact Information

[11] This Rule requires that any communication about a lawyer or law firm’s services include the name of, and contact information for, the lawyer or law firm. Contact information includes a website address, a telephone number, an email address or a physical office location.

Clean version of Rule 7.2:

RULE 7.2: COMMUNICATIONS CONCERNING A LAWYER’S SERVICES: SPECIFIC RULES

(a) A lawyer may communicate information regarding the lawyer’s services through any media.

(b) A lawyer shall not compensate, give or promise 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 and reasonable fees or dues charged by a lawyer referral service, if the services

i. does not engage in conduct that would violate the Rules if engaged in by a lawyer.

(3) pay the usual and reasonable fees or dues charged by a bar-operated non-profit referral service, including a fee which is calculated as a percentage of the legal fees earned by the lawyer to whom the service has referred a matter, provided such bar-operated non-profit lawyer referral service meets the following criteria:

i. the lawyer referral service shall be operated in the public interest for the purpose of referring prospective clients to lawyers, pro bono and public service legal programs, and government, consumer or other agencies who can provide the assistance the clients need. Such organization shall file annually with the State Disciplinary Board a report showing its rules and regulations, its subscription charges, agreements with counsel, the number of lawyers participating and the names and addresses of the lawyers participating in the service;

ii. the sponsoring bar association for the lawyer referral service must be open to all lawyers licensed and eligible to practice in this state who maintain an office within the

geographical area served, and who meet reasonable objectively determinable experience requirements established by the bar association;

iii. the combined fees charged by a lawyer and the lawyer referral service to a client referred by such service shall not exceed the total charges which the client would have paid had no service been involved; and

iv. a lawyer who is a member of the qualified lawyer referral service must maintain in force a policy of errors and omissions insurance in an amount no less than \$100,000 per occurrence and \$300,000 in the aggregate.

(4) pay the usual and reasonable fees to a qualified legal services plan or insurer providing legal services insurance as authorized by law to promote the use of the lawyer's services, the lawyer's partner or associates services so long as the communications of the organization are not false, fraudulent, deceptive or misleading;

(5) pay for a law practice in accordance with Rule 1.17;

(6) 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; and

(7) give nominal gifts as an expression of appreciation that are neither intended nor reasonably expected to be a form of compensation for recommending a lawyer's services.

(c) A lawyer may communicate the fact that the lawyer does or does not practice in particular fields of law. A lawyer who is a specialist in a particular field of law by experience, specialized training or education, or is certified by a recognized and bona fide professional entity, may communicate such specialty or certification so long as the state is not false or misleading.

(d) Any communication made under this Rule must include the name and contact information of at least one lawyer or law firm responsible for its content.

Comment

[1] This Rule permits public dissemination of information concerning a lawyer's or law firm's 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.

Paying Others to Recommend a Lawyer

[2] Except as permitted under paragraphs (b)(1)-(b)(7), lawyers are not permitted to pay others for recommending the lawyer's services. A communication contains a recommendation if it endorses or vouches for a lawyer's credentials, abilities, competence, character, or other professional qualities. Directory listings and group advertisements that list lawyers by practice area, without more, do not constitute impermissible "recommendations."

[3] Paragraph (b)(1) 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, television and radio station employees or spokespersons and website designers.

[4] Paragraph (b)(7) permits lawyers to give nominal gifts as an expression of appreciation to a person for recommending the lawyer's services or referring a prospective client. The gift may not be more than a token item as might be given for holidays, or other ordinary social hospitality. A gift is prohibited if offered or given in consideration of any promise, agreement or understanding that such a gift would be forthcoming or that referrals would be made or encouraged in the future.

[5] 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, any payment to the lead generator is consistent with Rules 1.5(e) (division of fees) and 5.4 (professional independence of the lawyer), and the lead generator's communications are consistent with Rule 7.1 (communications concerning a lawyer's services). 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 receive the referral. See Comment [2] (definition of "recommendation"). See also Rule 5.3 (duties of lawyers and law firms with respect to the conduct of nonlawyers); Rule 8.4(a)(1) (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 people who seek 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. [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. 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.

[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.

Communications about Fields of Practice

[9] Paragraph (c) of this Rule permits a lawyer to communicate that the lawyer does or does not practice in particular areas of law. A lawyer is generally permitted to state that the lawyer “concentrates in” or is a “specialist,” practices a “specialty,” or “specializes in” particular fields based on the lawyer’s experience, specialized training or education, but such communications are subject to the “false and misleading” standard applied in Rule 7.1 to communications concerning a lawyer’s services.

[10] The Patent and Trademark Office has a long-established policy of designating lawyers practicing before the Office. The designation of Admiralty practice also has a long historical tradition associated with maritime commerce and the federal courts. A lawyer’s communications about these practice areas are not prohibited by this Rule.

Required Contact Information

[11] This Rule requires that any communication about a lawyer or law firm’s services include the name of, and contact information for, the lawyer or law firm. Contact information includes a website address, a telephone number, an email address or a physical office location.