

Disciplinary Rules and Procedures Committee
Meeting of August 16, 2022
Hybrid meeting

MINUTES

Chair Michael Bagley called the meeting to order at 12:30 p.m.

Attendance:

Committee members: Michael Bagley, R. Gary Spencer, Erin H. Gerstenzang (virtual), Mazie Lynn Guertin, John G. Haubenreich, Patrick H. Head, R. Javoyne Hicks (virtual), Seth D. Kirschenbaum (virtual), Catherin Koura, Edward B. Krugman (virtual), David N. Lefkowitz (virtual), Patrick E. Longan (virtual), David O’Neal, Jabu M. Sengova (virtual), William Thomas, Jr. (virtual), J. Maria Waters (virtual), Peter Werdesheim, and Patrick Wheale (virtual).

Staff: Paula J. Frederick, Jenny K. Mittelman, William D. NeSmith, III, Damon Elmore, Carolyn Williams (virtual), and Kathya S. Jackson

Guests: Supreme Court Justices Warren (in person) and Bethel (virtual).

Approval of Minutes:

The Committee approved the Minutes from the June 3, 2022 meeting.

Action Items:

Rule 9.4(a):

By unanimous vote, the Committee voted to amend Rule 9.4(a) to add retired status to the list. A copy of the Rule as amended appears at the end of these minutes.

Rule 4-221

By unanimous vote, the Committee voted to amend Rule 4-221(b) to reflect that pleadings are filed through the SDB E-filing portal. A copy of the Rule as amended appears at the end of these minutes.

Rule 4-204.3(d)(1) and (2)

By unanimous vote, the Committee voted to amend Rule 4-204.3(d)(1) and (2) to allow the investigating member sole discretion to determine whether a response is adequate. A copy of the Rule as amended appears at the end of these minutes.

Proposed changes to Part VII

The Committee continued its discussion of comments received from the Georgia Association of Criminal Defense Lawyers and Attorney Auden Grumet. The Office of the General will seek guidance from Robert Goldstucker regarding the constitutional considerations raised by the

Supreme Court of Georgia. The Office of the General Counsel will provide the Committee with a memo from Mr. Goldstucker at its next meeting.

The Committee agreed to continue to edit the proposed draft before sending it to the Executive Committee.

The Committee agreed to remove proposed Rule 7.1 comment 8 from the draft and add “retired or” in the second sentence of proposed comment 5.

Chair Bagley moved to remove proposed Rule 7.2(b)(3)(iv) from the draft. The motion failed for lack of a second.

A copy of the revised draft appears at the end of these minutes.

Discussion Item:

David Lipscomb’s discussion item will be placed on the next agenda.

Informational Item:

ITILS/Rule 1.2 Comment 9

Patrick Longan, David Lipscomb, and members of the Committee on International Trade in Legal Services (“ITLS:”) met regarding the proposed amendment to Comment 9 of Rule 1.2. After further discussion they decided to make changes to the rule rather than the comment. They will provide the Committee with a draft at its next meeting.

The meeting adjourned at 2:00 p.m.

1 **RULE 9.4: JURISDICTION AND RECIPROCAL DISCIPLINE**

2 (a) Jurisdiction. Any lawyer admitted to practice law in this jurisdiction, including any
3 formerly admitted lawyer with respect to acts committed prior to taking retired status,
4 resignation, suspension, disbarment, or removal from practice on any of the grounds
5 provided in Rule 4-104 of the State Bar of Georgia, or with respect to acts subsequent
6 thereto that amount to the practice of law or constitute a violation of the Georgia Rules of
7 Professional Conduct or any Rules or Code subsequently adopted by the Supreme Court
8 of Georgia in lieu thereof, and any Domestic or Foreign Lawyer specially admitted by a
9 court of this jurisdiction for a particular proceeding and any Domestic or Foreign Lawyer
10 who practices law or renders or offers to render any legal services in this jurisdiction, is
11 subject to the disciplinary jurisdiction of the State Bar of Georgia.
12 ...

1 **Rule 4-221. Hearing Procedures**

2 ...

3 (b) Pleadings and Copies. ~~Original p~~Pleadings shall be filed with the Clerk of the Boards at the
4 headquarters of the State Bar of Georgia or through the State Disciplinary Board e-filing system.
5 ~~and t~~ The parties shall serve copies upon the Special Master and the opposing party pursuant to
6 the Georgia Civil Practice Act. Depositions and other original discovery shall be retained by
7 counsel and shall not be filed except as permitted under the Uniform Superior Court Rules.

8 ...

1 **Rule 4-204.3(d) Answer to Notice of Investigation Required**

2 ...

3 (d) In cases where the maximum sanction is disbarment or suspension and the respondent fails to
4 properly respond within the time required by these Rules, the Office of the General Counsel may
5 seek authorization from the Chair or Vice-Chair of the State Disciplinary Board to file a motion
6 for interim suspension of the respondent.

7 (1) When ~~an~~ the investigating member of the State Disciplinary Board notifies the Office
8 of the General Counsel that the respondent has failed to respond and that the respondent
9 should be suspended, the Office of the General Counsel shall, with the approval of the
10 Chair or Vice-Chair of the State Disciplinary Board, file a Motion for Interim Suspension
11 of the respondent. The Supreme Court of Georgia shall enter an appropriate order.

12 (2) When the investigating State Disciplinary Board member ~~and the Chair or Vice-Chair~~
13 ~~of the State Disciplinary Board~~ determines that a respondent who has been suspended for
14 failure to respond has filed an appropriate response and should be reinstated, the Office
15 of the General Counsel shall file a Motion to Lift Interim Suspension. The Supreme
16 Court of Georgia shall enter an appropriate order. The determination that an adequate
17 response has been filed is within the discretion of the investigating State Disciplinary
18 Board member and the Chair of the State Disciplinary Board.

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

2 ~~a.~~ A lawyer shall not make a false or misleading communication about the lawyer or the
3 lawyer's services. ~~By way of illustration, but not limitation, a~~A communication is false or
4 misleading if it: contains a material misrepresentation of fact or law, or omits a fact necessary
5 to make the statement considered as a whole not materially misleading.

- 6 ~~1. contains a material misrepresentation of fact or law or omits a fact necessary to~~
7 ~~make the statement considered as a whole not materially misleading;~~
8 ~~2. is likely to create an unjustified expectation about results the lawyer can achieve,~~
9 ~~or states or implies that the lawyer can achieve results by means that violate the~~
10 ~~Georgia Rules of Professional Conduct or other law;~~
11 ~~3. compares the lawyer's services with other lawyers' services unless the~~
12 ~~comparison can be factually substantiated;~~
13 ~~4. fails to include the name of at least one lawyer responsible for its content; or~~
14 ~~5. contains any information regarding contingent fees, and fails to conspicuously~~
15 ~~present the following disclaimer:~~

16
17 ~~"Contingent attorneys' fees refers only to those fees charged by attorneys for~~
18 ~~their legal services. Such fees are not permitted in all types of cases. Court costs~~
19 ~~and other additional expenses of legal action usually must be paid by the client."~~
20 ~~6. contains the language "no fee unless you win or collect" or any similar phrase~~
21 ~~and fails to conspicuously present the following disclaimer:~~

22
23 ~~"No fee unless you win or collect" [or insert the similar language used in the~~
24 ~~communication] refers only to fees charged by the attorney. Court costs and~~
25 ~~other additional expenses of legal action usually must be paid by the client.~~
26 ~~Contingent fees are not permitted in all types of cases.~~

27 ~~b. A public communication for which a lawyer has given value must be identified as such~~
28 ~~unless it is apparent from the context that it is such a communication.~~

29 ~~c. A lawyer retains ultimate responsibility to insure that all communications concerning~~
30 ~~the lawyer or the lawyer's services comply with the Georgia Rules of Professional~~
31 ~~Conduct.~~

32
33 The maximum penalty for a violation of this rule is disbarment.

34

35 Comment

36 [1] This ~~rule~~Rule governs ~~the content of~~ all communications about a ~~lawyer's~~lawyer's services,
37 including ~~the various types of~~ advertising ~~permitted by Rules 7.3 through 7.5.~~ Whatever means
38 are used to make known a ~~lawyer's~~lawyer's services, statements about them ~~should~~must be
39 truthful.

40 [2] ~~The prohibition in sub-paragraph (a)(2) of this Rule 7.1: Communications Concerning a~~
41 ~~Lawyer's Services of~~ Misleading truthful statements ~~that may create "unjustified~~
42 ~~expectations"~~ are prohibited by this Rule. A truthful statement is misleading if it omits a fact
43 necessary to make the lawyer's communication considered as a whole not materially
44 misleading. A truthful statement is misleading if a substantial likelihood exists that it will lead a
45 reasonable person to formulate a specific conclusion about the lawyer or the lawyer's services
46 for which there is no reasonable factual foundation. A truthful statement is also misleading if
47 presented in a way that creates a substantial likelihood that a reasonable person would
48 ~~ordinarily preclude advertisements about results obtained~~ believe the lawyer's communication
49 requires that person to take further action when, in fact, no action is required.

50 [3] A communication that truthfully reports a lawyer's achievements on behalf of ~~a client, such~~
51 ~~as the amount of a damage award or the lawyer's record in obtaining favorable verdicts, and~~
52 ~~advertisements containing client endorsements. Such information may create the~~ clients or
53 former clients may be misleading if presented so as to lead a reasonable person to form an
54 unjustified expectation that the same results could be obtained for other clients in similar
55 ~~results can be obtained for others~~matters without reference to the specific factual and legal
56 circumstances of each client's case. Similarly, an unsubstantiated claim about a lawyer's or law
57 firm's services or fees, or an unsubstantiated comparison of the lawyer's or law firm's services
58 or fees with those of other lawyers or law firms, may be misleading if presented with such
59 specificity as would lead a reasonable person to conclude that the comparison or claim can be
60 substantiated. The inclusion of an appropriate disclaimer or qualifying language may preclude a
61 finding that a statement is likely to create unjustified expectations or otherwise mislead the
62 public.

63 ~~Affirmative Disclosure~~

64 ~~[3] In general, the intrusion on the First Amendment right of commercial speech resulting from~~
65 ~~rationality-based affirmative disclosure requirements is minimal, and is therefore a preferable~~
66 ~~form of regulation to absolute bans or other similar restrictions. For example, there is no~~
67 ~~significant interest in failing to include the name of at least one accountable attorney in all~~
68 ~~communications promoting the services of a lawyer or law firm as required by sub-paragraph~~
69 ~~(a)(4) of Rule 7.1: Communications Concerning a Lawyer's Services. Nor is there any substantial~~
70 ~~burden imposed as a result of the affirmative disclaimer requirement of sub-paragraph (a)(6)~~
71 ~~upon a lawyer who wishes to make a claim in the nature of "no fee unless you win." Indeed, the~~
72 ~~United States Supreme Court has specifically recognized that affirmative disclosure of a client's~~
73 ~~liability for costs and expenses of litigation may be required to prevent consumer confusion~~
74 ~~over the technical distinction between the meaning and effect of the use of such terms as~~
75 ~~"fees" and "costs" in an advertisement.~~

76 ~~[4] Certain promotional communications of a lawyer may, as a result of content or~~
77 ~~circumstance, tend to mislead a consumer to mistakenly believe that the communication is~~
78 ~~something other than a form of promotional communication for which the lawyer has paid.~~
79 ~~Examples of such a communication might include advertisements for seminars on legal topics~~
80 ~~directed to the lay public when such seminars are sponsored by the lawyer, or a newsletter or~~
81 ~~newspaper column which appears to inform or to educate about the law. Paragraph (b) of this~~
82 ~~Rule 7.1: Communications Concerning a Lawyer's Services would require affirmative disclosure~~
83 ~~that a lawyer has given value in order to generate these types of public communications if such~~
84 ~~is in fact the case.~~

85 ~~Accountability~~

86 ~~[5] Paragraph (c) makes explicit an advertising attorney's ultimate responsibility for all the~~
87 ~~lawyer's promotional communications and would suggest that review by the lawyer prior to~~
88 ~~dissemination is advisable if any doubts exist concerning conformity of the end product with~~
89 ~~these Rules. Although prior review by disciplinary authorities is not required by these Rules,~~
90 ~~lawyers are certainly encouraged to contact disciplinary authorities prior to authorizing a~~
91 ~~promotional communication if there are any doubts concerning either an interpretation of~~
92 ~~these Rules or their application to the communication.~~

93 ~~[4] It is professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud,~~
94 ~~deceit or misrepresentation. Rule 8.4(a)(4). See also Rule 8.4(a)(6) for the prohibition against~~
95 ~~stating or implying an ability to improperly influence a government agency or official or to~~
96 ~~achieve results by means that violate the Rules of Professional Conduct or other law.~~

97 ~~[5] Firm names, letterhead and professional designations are communications concerning a~~
98 ~~lawyer's services. A firm may be designated by the names of all or some of its current members,~~
99 ~~by the names of retired or deceased members where there has been a succession in the firm's~~
100 ~~identity or~~

101 by a trade name if it is not false or misleading. A lawyer or law firm also may be designated by a
102 distinctive website address, social media username or comparable professional designation
103 that is not misleading. A law firm name or designation is misleading if it implies a connection
104 with a government agency, with a deceased lawyer who was not a former member of the firm,
105 with a lawyer not associated with the firm or a predecessor firm, with a nonlawyer or with a
106 public or charitable legal services organization. If a firm uses a trade name that includes a
107 geographical name such as “Springfield Legal Clinic,” an express statement explaining that it is
108 not a public legal aid organization may be required to avoid a misleading implication.

109 [6] A law firm with offices in more than one jurisdiction may use the same name or other
110 professional designation in each jurisdiction.

111 [7] Lawyers may not imply or hold themselves out as practicing together in one firm when they
112 are not a firm, as defined in Rule 1.0(c), because to do so would be false and misleading.

1 **RULE 7.2: ~~ADVERTISING~~ COMMUNICATIONS CONCERNING A LAWYER'S SERVICES: SPECIFIC**
2 **RULES**

3 ~~a.~~ Subject to the requirements of Rules 7.1 and 7.3, ~~(a)~~ A lawyer may ~~advertise~~ communicate
4 information regarding the lawyer's services through any media.

5 ~~1. public media, such as a telephone directory, legal directory, newspaper or other~~
6 ~~periodical;~~

7 ~~2. outdoor advertising;~~

8 ~~3. radio or television;~~

9 ~~4. written, electronic or recorded communication.~~

10 ~~b. A copy or recording of an advertisement or communication shall be kept for two years~~
11 ~~after its last dissemination along with a record of when and where it was used.~~

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

17
18 ~~1. Disclosure of identity and physical location of attorney. Any advertisement shall~~
19 ~~include the name, physical location and telephone number of each lawyer or law~~
20 ~~firm who paid for the advertisement and who takes full personal responsibility~~
21 ~~for the advertisement. In disclosing the physical location, the responsible lawyer~~
22 ~~shall state the full address of the location of the principal bona fide office of each~~
23 ~~lawyer who is prominently identified pursuant to this paragraph. For the~~
24 ~~purposes of this Rule, a bona fide office is defined as a physical location~~
25 ~~maintained by the lawyer or law firm from which the lawyer or law firm~~
26 ~~furnishes legal services on a regular and continuing basis. In the absence of a~~
27 ~~bona fide physical office, the lawyer shall prominently disclose the full address~~
28 ~~listed with the State Bar of Georgia or other Bar to which the lawyer is~~
29 ~~admitted. A lawyer who uses a referral service shall ensure that the service~~
30 ~~discloses the location of the lawyer's bona fide office, or the registered bar~~
31 ~~address, when a referral is made.~~

32 ~~2. Disclosure of referral practice. If the lawyer or law firm will refer the majority of~~
33 ~~callers to other attorneys, that fact must be disclosed and the lawyer or law firm~~
34 ~~must comply with the provisions of Rule 7.3(c) regarding referral services.~~

35 ~~3. Disclosure of spokespersons and portrayals. Any advertisement that includes a~~
36 ~~non-attorney spokesperson, portrayal of a lawyer by a non-lawyer, portrayal of a~~
37 ~~client by a non-client, or any paid testimonial or endorsement, shall include~~
38 ~~prominent disclosure of the use of a non-attorney spokesperson, portrayal of a~~
39 ~~lawyer by a non-lawyer, or of a client by a non-client.~~

40 ~~4. Disclosures regarding fees. A lawyer or law firm advertising any fixed fee for~~
41 ~~specified legal services shall, at the time of fee publication, have available to the~~
42 ~~public a written statement clearly describing the scope of each advertised~~
43 ~~service, which statement shall be available to the client at the time of retainer~~
44 ~~for any such service.~~

45 ~~5. Appearance of legal notices or pleadings. Any advertisement that includes any~~
46 ~~representation that resembles a legal pleading, notice, contract or other legal~~
47 ~~document shall include prominent disclosure that the document is an~~
48 ~~advertisement rather than a legal document.~~

49
50 The maximum penalty for a violation of this Rule is a public reprimand.

51
52 **Comment**

53
54 ~~[1] To assist the public in obtaining legal services, lawyers should be allowed to make~~
55 ~~known their services not only through reputation but also through organized~~
56 ~~information campaigns in the form of advertising. Advertising involves an active quest~~
57 ~~for clients, contrary to the tradition that a lawyer should not seek clientele. However,~~
58 ~~the public's need to know about legal services can be fulfilled in part through~~
59 ~~advertising. This need is particularly acute in the case of persons of moderate means~~
60 ~~who have not made extensive use of legal services. The interest in expanding public~~
61 ~~information about legal services ought to prevail over considerations of tradition.~~
62 ~~Nevertheless, advertising by lawyers entails the risk of practices that are misleading or~~
63 ~~overreaching.~~

64 -

65 ~~[2](b) A lawyer shall not compensate, give or promise anything of value to a person for~~
66 ~~recommending the lawyer's services except that a lawyer may:~~

67 ~~(1) pay the reasonable costs of advertisements or communications permitted by this Rule;~~

68 ~~(2) pay the usual and reasonable fees or dues charged by a lawyer referral service, if the service~~
69 ~~does not engage in conduct that would violate the Rules if engaged in by a lawyer;~~

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

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

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

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

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

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

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

95 (6) refer clients to another lawyer or a nonlawyer professional pursuant to an agreement not
96 otherwise prohibited under these Rules that provides for the other person to refer clients or
97 customers to the lawyer, if:

98 (i) the reciprocal referral agreement is not exclusive; and

99 (ii) the client is informed of the existence and nature of the agreement; and

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

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

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

108 The maximum penalty for a violation of this Rule is disbarment.

109

110 Comment

111 [1] This Rule permits public dissemination of information concerning a lawyer's namelawyer's
112 or firmlaw firm's name, address, email address, website, and telephone number; the kinds of
113 services the lawyer will undertake; the basis on which the lawyer'slawyer's fees are
114 determined, including prices for specific services and payment and credit arrangements; a
115 lawyer'slawyer's foreign language ability; names of references and, with their consent, names
116 of clients regularly represented; and other information that might invite the attention of those
117 seeking legal assistance.

118 ~~[3] Questions of effectiveness and taste in advertising are matters of speculation and~~
119 ~~subjective judgment. Some jurisdictions have had extensive prohibitions against~~
120 ~~television advertising, against advertising going beyond specified facts about a lawyer,~~
121 ~~or against "undignified" advertising. Television is now one of the most powerful media~~
122 ~~for getting information to the public, particularly persons of low and moderate income;~~
123 ~~prohibiting television advertising, therefore, would impede the flow of information~~
124 ~~about legal services to many sectors of the public. Limiting the information that may be~~
125 ~~advertised has a similar effect and assumes that the bar can accurately forecast the kind~~
126 ~~of information that the public would regard as relevant.~~

127 ~~[4] Neither this Rule nor Rule 7.3: Direct Contact with Prospective Clients prohibits~~
128 ~~communications authorized by law, such as notice to members of a class in class action~~
129 ~~litigation.~~

130 ~~Record of Advertising~~

131 ~~[5] Paragraph (b) requires that a record of the content and use of advertising be kept in~~
132 ~~order to facilitate enforcement of this Rule.~~

133 -

134 Paying Others to Recommend a Lawyer

135 [2] Except as permitted under paragraphs (b)(1)-(b)(7), lawyers are not permitted to pay others
136 for recommending the lawyer's services. A communication contains a recommendation if it
137 endorses or vouches for a lawyer's credentials, abilities, competence, character, or other
138 professional qualities. Directory listings and group advertisements that list lawyers by practice
139 area, without more, do not constitute impermissible "recommendations."

140 [3] Paragraph (b)(1) allows a lawyer to pay for advertising and communications permitted by
141 this Rule, including the costs of print directory listings, on-line directory listings, newspaper ads,
142 television and radio airtime, domain-name registrations, sponsorship fees, Internet-based
143 advertisements, and group advertising. A lawyer may compensate employees, agents and
144 vendors who are engaged to provide marketing or client development services, such as
145 publicists, public-relations personnel, business-development staff, television and radio station
146 employees or spokespersons and website designers.

147 [4] Paragraph (b)(7) permits lawyers to give nominal gifts as an expression of appreciation to a
148 person for recommending the lawyer's services or referring a prospective client. The gift may
149 not be more than a token item as might be given for holidays, or other ordinary social
150 hospitality. A gift is prohibited if offered or given in consideration of any promise, agreement
151 or understanding that such a gift would be forthcoming or that referrals would be made or
152 encouraged in the future.

153 [5] A lawyer may pay others for generating client leads, such as Internet-based client leads, as
154 long as the lead generator does not recommend the lawyer, any payment to the lead generator
155 is consistent with Rules 1.5(e) (division of fees) and 5.4 (professional independence of the
156 lawyer), and the lead generator's communications are consistent with Rule 7.1
157 (communications concerning a lawyer's services). To comply with Rule 7.1, a lawyer must not
158 pay a lead generator that states, implies, or creates a reasonable impression that it is
159 recommending the lawyer, is making the referral without payment from the lawyer, or has
160 analyzed a person's legal problems when determining which lawyer should receive the referral.
161 See Comment [2] (definition of "recommendation"). See also Rule 5.3 (duties of lawyers and
162 law firms with respect to the conduct of nonlawyers); Rule 8.4(a)(1) (duty to avoid violating the
163 Rules through the acts of another).

164 [6] A lawyer may pay the usual charges of a legal service plan or a lawyer referral service. A
165 legal service plan is a prepaid or group legal service plan or a similar delivery system that assists
166 people who seek to secure legal representation. A lawyer referral service, on the other hand, is
167 any organization that holds itself out to the public as a lawyer referral service.

168 [7] A lawyer who accepts assignments or referrals from a legal service plan or referrals from a
169 lawyer referral service must act reasonably to assure that the activities of the plan or service
170 are compatible with the lawyer's professional obligations. Legal service plans and lawyer
171 referral services may communicate with the public, but such communication must be in
172 conformity with these Rules. Thus, advertising must not be false or misleading, as would be the
173 case if the communications of a group advertising program or a group legal services plan would
174 mislead the public to think that it was a lawyer referral service sponsored by a state agency or
175 bar association.

176 [8] A lawyer also may agree to refer clients to another lawyer or a nonlawyer professional, in
177 return for the undertaking of that person to refer clients or customers to the lawyer. Such
178 reciprocal referral arrangements must not interfere with the lawyer's professional judgment as
179 to making referrals or as to providing substantive legal services. See Rules 2.1 and 5.4(c). Except

180 as provided in Rule 1.5(e), a lawyer who receives referrals from a lawyer or nonlawyer
181 professional must not pay anything solely for the referral, but the lawyer does not violate
182 paragraph (b) of this Rule by agreeing to refer clients to the other lawyer or nonlawyer
183 professional, so long as the reciprocal referral agreement is not exclusive and the client is
184 informed of the referral agreement. Conflicts of interest created by such arrangements are
185 governed by Rule 1.7. Reciprocal referral agreements should not be of indefinite duration and
186 should be reviewed periodically to determine whether they comply with these Rules. This Rule
187 does not restrict referrals or divisions of revenues or net income among lawyers within firms
188 comprised of multiple entities.

189 Communications about Fields of Practice

190 [9] Paragraph (c) of this Rule permits a lawyer to communicate that the lawyer does or does
191 not practice in particular areas of law. A lawyer is generally permitted to state that the lawyer
192 “concentrates in” or is a “specialist,” practices a “specialty,” or “specializes in” particular fields
193 based on the lawyer’s experience, specialized training or education, but such communications
194 are subject to the “false and misleading” standard applied in Rule 7.1 to communications
195 concerning a lawyer’s services.

196 [10] The Patent and Trademark Office has a long-established policy of designating lawyers
197 practicing before the Office. The designation of Admiralty practice also has a long historical
198 tradition associated with maritime commerce and the federal courts. A lawyer’s
199 communications about these practice areas are not prohibited by this Rule.

200 Required Contact Information

201 [11] This Rule requires that any communication about a lawyer or law firm’s services include
202 the name of, and contact information for, the lawyer or law firm. Contact information includes
203 a website address, a telephone number, an email address or a physical office location.

204

1 ~~RULE 7.3 DIRECT CONTACT WITH PROSPECTIVE CLIENTS~~

2 ~~a. A lawyer shall not send, or knowingly permit to be sent, on behalf of the lawyer, the~~
3 ~~lawyer's firm, lawyer's partner, associate or any other lawyer affiliated with the lawyer or~~
4 ~~the lawyer's firm, a written communication to a prospective client for the purpose of~~
5 ~~obtaining professional employment if:~~

6 **Rule 7.3: Solicitation of Clients**

7 (a) "Solicitation" or "solicit" denotes a communication initiated by or on behalf of a lawyer or
8 law firm that is directed to a specific person the lawyer knows or reasonably should know needs
9 legal services in a particular matter and that offers to provide, or reasonably can be understood
10 as offering to provide, legal services for that matter.

11 (b) A lawyer shall not solicit professional employment by live person-to-person contact when a
12 significant motive for the lawyer's doing so is the lawyer's or law firm's pecuniary gain, unless
13 the contact is with a:

14 (1) lawyer;

15 (2) person who has been a family, close personal, or prior business or professional relationship
16 with the lawyer or law firm; or

17 (3) person who routinely uses for business purposes the type of legal services offered by the
18 lawyer.

19 (c) A lawyer shall not solicit professional employment even when not otherwise prohibited by
20 paragraph (b), if:

21 ~~1.~~ (1) the target of the solicitation has made known to the lawyer ~~that a person does not a~~
22 ~~desire~~ not to receive communications from ~~be solicited by~~ the lawyer; or

23 ~~2.~~ (2) the ~~communications~~solicitation involves coercion, duress, fraud, overreaching,
24 harassment, intimidation or undue influence; or

25 3. (3) the written communication concerns an action for personal injury or wrongful death
26 or otherwise relates to an accident or disaster involving the person to whom the
27 communication is addressed or a relative of that person, unless the accident or disaster
28 occurred more than 30 days prior to the mailing of the communication; or

29 4. (4) the lawyer knows or reasonably should know that the physical, emotional or mental
30 state of the person is such that the person could not exercise reasonable judgment in
31 employing a lawyer.

32 ~~b. Written communications to a prospective client, other than a close friend, relative, former~~
33 ~~client or one whom the lawyer reasonably believes is a former client, for the purpose of~~
34 ~~obtaining professional employment shall be plainly marked "Advertisement" on the face~~
35 ~~of the envelope and on the top of each page of the written communication in type size no~~
36 ~~smaller than the largest type size used in the body of the letter.~~

37 ~~c. A lawyer shall not compensate or give anything of value to a person or organization to~~
38 ~~recommend or secure the lawyer's employment by a client, or as a reward for having~~
39 ~~made a recommendation resulting in the lawyer's employment by a client; except that the~~
40 ~~lawyer may pay for public communications permitted by Rule 7.1 and except as follows:~~

41 ~~1. A lawyer may pay the usual and reasonable fees or dues charged by a lawyer~~
42 ~~referral service, if the service:~~
43 ~~i. does not engage in conduct that would violate the Rules if engaged in by a~~
44 ~~lawyer;~~
45 ~~ii. provides an explanation to the prospective client regarding how the~~
46 ~~lawyers are selected by the service to participate in the service; and~~
47 ~~iii. discloses to the prospective client how many lawyers are participating in~~
48 ~~the service and that those lawyers have paid the service a fee to participate~~
49 ~~in the service.~~

50 ~~2. A lawyer may pay the usual and reasonable fees or dues charged by a bar-~~
51 ~~operated non-profit lawyer referral service, including a fee which is calculated as~~
52 ~~a percentage of the legal fees earned by the lawyer to whom the service has~~
53 ~~referred a matter, provided such bar-operated non-profit lawyer referral service~~
54 ~~meets the following criteria:~~

55 ~~i. the lawyer referral service shall be operated in the public interest for the~~
56 ~~purpose of referring prospective clients to lawyers, pro bono and public~~
57 ~~service legal programs, and government, consumer or other agencies who~~
58 ~~can provide the assistance the clients need. Such organization shall file~~
59 ~~annually with the State Disciplinary Board a report showing its rules and~~
60 ~~regulations, its subscription charges, agreements with counsel, the number~~
61 ~~of lawyers participating and the names and addresses of the lawyers~~
62 ~~participating in the service;~~
63 ~~ii. the sponsoring bar association for the lawyer referral service must be open~~
64 ~~to all lawyers licensed and eligible to practice in this state who maintain~~

65 an office within the geographical area served, and who meet reasonable
66 objectively determinable experience requirements established by the bar
67 association;
68 iii. ~~the combined fees charged by a lawyer and the lawyer referral service to a~~
69 ~~client referred by such service shall not exceed the total charges which the~~
70 ~~client would have paid had no service been involved; and~~
71 iv. ~~a lawyer who is a member of the qualified lawyer referral service must~~
72 ~~maintain in force a policy of errors and omissions insurance in an amount~~
73 ~~no less than \$100,000 per occurrence and \$300,000 in the aggregate.~~
74 3. ~~A lawyer may pay the usual and reasonable fees to a qualified legal services plan~~
75 ~~or insurer providing legal services insurance as authorized by law to promote the~~
76 ~~use of the lawyer's services, the lawyer's partner or associates services so long as~~
77 ~~the communications of the organization are not false, fraudulent, deceptive or~~
78 ~~misleading;~~
79 4. ~~A lawyer may pay for a law practice in accordance with Rule 1.17.~~
80 d. ~~A lawyer shall not solicit professional employment as a private practitioner for the~~
81 ~~lawyer, a partner or associate through direct personal contact or through live telephone~~
82 ~~contact, with a nonlawyer who has not sought advice regarding employment of a lawyer.~~
83 e. ~~A lawyer shall not accept employment when the lawyer knows or reasonably should~~
84 ~~know that the person who seeks to employ the lawyer does so as a result of conduct by~~
85 ~~any person or organization that would violate these Rules if engage in by a lawyer.~~

86 (d) This Rule does not prohibit communications authorized by law or ordered by a court or
87 other tribunal.

88 (e) Notwithstanding the prohibitions in this Rule, a lawyer may participate with a prepaid or
89 group legal service plan operated by an organization not owned or directed by the lawyer that
90 uses live person-to-person contact to enroll members or sell subscriptions for the plan from
91 persons who are not known to need legal services in a particular matter covered by the plan.

92 The maximum penalty for a violation of this Rule is disbarment.

93

94 Comment

95 *Direct Personal Contact*

96 [1] There is a potential for abuse inherent in Paragraph (b) prohibits a lawyer from soliciting
97 professional employment by live person-to-person contact when a significant motive for the
98 lawyer's doing so is the lawyer's or the law firm's pecuniary gain. A lawyer's communication is

99 not a solicitation if it is directed to the general public, such as through a billboard, an Internet
100 banner advertisement, a website or a television commercial, or if it is in response to a request
101 for information or is automatically generated in response to electronic searches.

102 [2] "Live person-to-person contact" means in-person, face-to-face, live telephone and other
103 real-time visual or auditory person-to-person communications where the person is subject to a
104 direct personal contact by a lawyer of prospective clients encounter without time for reflection.
105 Such person-to-person contact does not include chat rooms, text messages or other written
106 communications that recipients may easily disregard. A potential for overreaching exists when a
107 lawyer, seeking pecuniary gain, solicits a person known to be in need of legal services. If This
108 form of contact subjects the lay person to the private importuning of a trained advocate, in
109 a direct interpersonal encounter. A prospective client often feels The person, who may already
110 feel overwhelmed by the situation circumstances giving rise to the need for legal services, and
111 may have an impaired capacity for reason, may find it difficult to fully evaluate all available
112 alternatives with reasoned judgment and protective appropriate self-interest. Furthermore, in
113 the lawyer seeking face of the retainer lawyer's presence and insistence upon an immediate
114 response. The situation is faced fraught with a conflict stemming from the lawyer's own interest,
115 which may color the advice and representation offered the vulnerable prospect possibility of
116 undue influence, intimidation, and overreaching.

117 [2] The situation is therefore fraught with the possibility of undue influence, intimidation and
118 overreaching. [3] The potential for abuse overreaching inherent in solicitation of prospective
119 clients through personal live person-to-person contact justifies its prohibition, particularly since
120 the direct written contact permitted under paragraph (b) of this Rule offers an lawyers have
121 alternative means of communicating conveying necessary information to those who may be in
122 need of legal services. Also included in the prohibited types of personal contact are direct,
123 personal contact through an intermediary and live contact by telephone.

124 *Direct Written Solicitation*

125 [3] Subject to the requirements of Rule 7.1 and paragraphs (b) and (c) of this Rule, promotional
126 communication by a lawyer through direct written contact is generally permissible. The public's
127 need to receive information concerning their legal rights and the availability of legal services has
128 been consistently recognized as a basis for permitting direct written communication since this
129 type of communication may often be the best and most effective means of informing. So long as
130 this stream of information flows cleanly, it will be permitted to flow freely.

131 ~~[4] Certain narrowly drawn restrictions on this type of communication are justified by a~~
132 ~~substantial state interest in facilitating the public's intelligent selection of counsel, including the~~
133 ~~restrictions of paragraphs (a) (3) and (a) (4) which proscribe direct mailings to persons such as an~~
134 ~~injured and hospitalized accident victim or the bereaved family of a deceased.~~

135 ~~[5]. In order to make it clear that the communication is commercial in nature, paragraph (b)~~
136 ~~requires inclusion of an appropriate affirmative "advertisement" disclaimer. Again, the~~
137 ~~traditional exception for contact with close friends, relatives and former clients is recognized and~~
138 ~~permits elimination of the disclaimer in direct written contact with these persons~~particular,
139 communications can be mailed or transmitted by email or other electronic means that do not
140 violate other laws. These forms of communications make it possible for the public to be
141 informed about the need for legal services, and about the qualifications of available lawyers
142 and law firms, without subjecting the public to live person-to-person persuasion that may
143 overwhelm a person's judgment.

144 ~~[6] This Rule does not prohibit communications~~ [4] The contents of live person-to-person
145 contact can be disputed and may not be subject to third-party scrutiny. Consequently, they are
146 much more likely to approach (and occasionally cross) the dividing line between accurate
147 representations and those that are false and misleading.

148 [5] There is far less likelihood that a lawyer would engage in overreaching against a former
149 client, or a person with whom the lawyer has a close personal, family, business or professional
150 relationship, or in situations in which the lawyer is motivated by considerations other than the
151 lawyer's pecuniary gain. Nor is there a serious potential for overreaching when the person
152 contacted is a lawyer or is known to routinely use the type of legal services involved for
153 business purposes. Examples include persons who routinely hire outside counsel to represent
154 the entity; entrepreneurs who regularly engage business, employment law or intellectual
155 property lawyers; small business proprietors who routinely hire lawyers for lease or contract
156 issues; and other people who routinely retain lawyers for business transactions or formations.
157 Paragraph (b) is not intended to prohibit a lawyer from participating in constitutionally
158 protected activities of public or charitable legal-service organizations or bona fide political,

159 social, civic, fraternal, employee or trade organizations whose purposes include providing or
160 recommending legal services to their members or beneficiaries.

161 [6] A solicitation that contains false or misleading information within the meaning of Rule 7.1,
162 that involves coercion, duress, fraud, overreaching, harassment, intimidation or undue
163 influence within the meaning of Rule 7.3 (c)(2), or that involves contact with someone who has
164 made known to the lawyer a desire not to be solicited by the lawyer within the meaning of Rule
165 7.3(c)(1) is prohibited. Live, person-to-person contact of individuals who may be especially
166 vulnerable to coercion or duress is ordinarily not appropriate, for example, the elderly, those
167 whose first language is not English, or the disabled.

168 [7] This Rule does not prohibit a lawyer from contacting representatives of organizations or
169 groups that may be interested in establishing a group or prepaid legal plan for their members,
170 insureds, beneficiaries or other third parties for the purpose of informing such entities of the
171 availability of and details concerning the plan or arrangement which the lawyer or lawyer's firm
172 is willing to offer. This form of communication is not directed to people who are seeking legal
173 services for themselves. Rather, it is usually addressed to an individual acting in a fiduciary
174 capacity seeking a supplier of legal services for others who may, if they choose, become
175 prospective clients of the lawyer. Under these circumstances, the activity which the lawyer
176 undertakes in communicating with such representatives and the type of information
177 transmitted to the individual are functionally similar to and serve the same purpose as
178 advertising permitted under Rule 7.2.

179 [8] Communications authorized by law, such as or ordered by a court or tribunal include a
180 notice to potential members of a class in class action litigation.

181 *Paying Others to Recommend a Lawyer*

182 ~~[7] A lawyer is allowed to pay for communications permitted by these Rules, but otherwise is not~~
183 ~~permitted to pay another person for channeling professional work. This restriction does not~~
184 ~~prevent an organization or person other than the lawyer from advertising or recommending the~~
185 ~~lawyer's services. Thus, a legal aid agency, a prepaid legal services plan or prepaid legal~~
186 ~~insurance organization may pay to advertise legal services provided under its auspices.~~

187 [9] Paragraph (e) of this Rule permits a lawyer to participate with an organization which uses
188 personal contact to enroll members for its group or prepaid legal service plan, provided that the
189 personal contact is not undertaken by any lawyer who would be a provider of legal services
190 through the plan. The organization must not be owned by or directed (whether as manager or
191 otherwise) by any lawyer or law firm that participates in the plan. For example, paragraph (e)
192 would not permit a lawyer to create an organization controlled directly or indirectly by the
193 lawyer and use the organization for the person-to-person solicitation of legal employment of
194 the lawyer through memberships in the plan or otherwise. The communication permitted by
195 these organizations must not be directed to a person known to need legal services in a
196 particular matter, but must be designed to inform potential plan members generally of another
197 means of affordable legal services. Lawyers who participate in a legal service plan must
198 reasonably assure that the plan sponsors are in compliance with Rules 7.1, 7.2 and 7.3 (c).