ABA report on recent amendments to Rules 7.1-7.5 of the ABA Model Rules of Professional Conduct. (Received by Justice McDonald on 10-31-18.) On 11-19-18, RC appointed a working group, chaired by Judge Sheridan, to study the matter. The Committee tabled the matter for the working group to refer it to the CBA, SWBC, SWGC, and the CTLA for comments. Judge Sheridan to provide status report and timeline at next RC meeting. Received comments from CBA Committee on Professional Ethics (Marcy Stovall). On 12-18-18, Judge Sheridan gave a status report that CBA expects rules may be revised in time for presenting at 2019 Judges’ Annual Mtg. Received proposal from CBA on 2-8-19. On 2-11-19, RC referred to SWBC, SWGC, OCDC. Comments by 3-11-19. Tabled to March meeting. Comments received.
Hello Joe.
I have had an opportunity to review the package of materials outlining the proposed changes to rules 7.1-7.5. I was hoping to have a conference with the attorneys in my office but it is been a very busy time with the grievance hearings being conducted the first two weeks of the month. I have had the opportunity to review the response of the statewide grievance committee and I can indicate that I concur with the position taken by that office.

Please let me know if you need any additional information.

Brian B. Staines
Chief Disciplinary Counsel
100 Washington Street
Hartford, CT 06106
860-706-5058 phone
860-706-5063 fax
March 11, 2019

Attorney Joseph Del Ciampo
Counsel to the Rules Committee of the Superior Court
100 Washington Street
Hartford, CT 06106

RE: Proposal by the CBA to Adopt Recent Amendments by the ABA to Rules 7.1-7.5 of the Model Rules of Professional Conduct on the Agenda of the Rules Committee of the Superior Court

Dear Attorney Del Ciampo:

We write to report that the Statewide Grievance Committee (SGC) reviewed submissions made to the Rules Committee by the American Bar Association (ABA) and the Connecticut Bar Association (CBA) regarding the Rules of Professional Conduct on attorney advertising. Primarily, the Committee reviewed the January 30, 2019 submission to the Rules Committee by Attorney Marcy Stovall on behalf of the CBA, which addressed recent attorney advertising rule amendments made to the Model Rules of Professional Conduct by the ABA. The Rules Committee referred the ABA and CBA submissions to the SGC for comment on February 20, 2019. In order to expedite its review, the Committee focused on the CBA’s submission and its redlined compilation of the proposed new rules should they be adopted. Attorney Stovall generously provided us with a paginated and line-numbered version of its redlined document (attached), which we refer to in this letter by line number, and sometimes call the “proposed new rules.”

Before outlining the SGC’s comments to the proposed new rules, we note that the SGC agreed with three areas highlighted by the CBA in its January 30, 2019 proposal:

1) To adopt the ABA amendment to the Model Rules allowing attorneys to give nominal gifts in appreciation of a referral.

2) To retain the requirement currently found in Rule 7.3(c) that targeted solicitations should be labelled as advertising.

3) To retain the requirement currently found in Rule 7.2(f), which provides that communications about contingent fees disclose if costs are collected.
Regarding the balance of the submissions, the SGC generally noted that if the proposed new rules are adopted, then terminology used throughout Connecticut’s existing advertising rules will need to be changed to conform to that of the proposed new rules. For example, the term “advertisement” will need to be changed to “communication” and “communication” to “solicitation” in relevant rules and commentaries. Also, because more of the language of the current advertising rules is relegated to the commentaries in the proposed new rules, the SGC recommended adopting a linear structure in the commentaries that tracks the pertinent rule and cites the relevant subsection of the rule in the commentary. For example, in the commentary to Rule 7.2, Section (c)(5) (266-271) appears before the commentary to section (c)(4) (319-332), which is not specifically labelled therein.

Specifically, the Statewide Grievance Committee made the following comments and recommendations regarding the proposed new rules (references are to the line number of the CBA redline compilation attached).

Rule 7.1:

1) All of the changes are in the commentary. The SGC had no objection to the proposal providing that any statement that would lead a reasonable person to take action when none is required is misleading. (27-29).

2) The SGC had no objection to substituting the term “communication” for the current “an advertisement” in the commentary. (31).

3) The SGC had no objection to adding language that a lawyer’s fees or services involving “an unsubstantiated claim” is also misleading. (35-36).

4) New commentary language adds that conduct that violates Rule 8.4(3), dishonesty, fraud, deceit or misrepresentation is misconduct. (43-44). The current commentary only cites Rule 8.4(5), the prohibition against stating an ability to improperly influence government officials. (44-47).

5) The SGC had no objection to adding language that specifically permits the use of a website address, social media username or comparable professional designation as a firm name provided it is not misleading. (53-61).

6) The SGC noted that most of the language of current Connecticut Rule 7.5 and its commentary have been inserted into the new commentary of Rule 7.1. (49-72). Rule 7.5 is thereafter deleted. The SGC did not object to this modification except the proposal to remove the following language currently found in Rule 7.5(b): “identification of the lawyers in the office of the firm shall indicate the jurisdictional limitations on those not licensed to practice in the jurisdiction where the office is located.” The SGC recommended that this language be added to the commentary to new Rule 7.1 at line 64.

7) The SGC noted a typographical error in line 67 of the commentary in the
proposed new rules. The rule citation should be to 1.0(d) and not 1.0(c).

Rule 7.2:

1) The SGC agreed with the ABA regarding the title for the proposed new rule. The ABA proposed title is “Communications Concerning a Lawyer’s Services: Specific Rules.” The CBA proposed title is “Communications Concerning a Lawyer’s Services: Specific Cases.” (76-77). The SGC concluded that the ABA suggested title better describes the rule.

2) The SGC did not object to the proposed change that would permit an attorney to advertise in “any media” from the current “public media.” (81).

3) The SGC recommended, along with the CBA, that Rule 7.2(b)(1) and (2) be retained. (83-90) The SGC recommended subsection (b)(1) be reworded to remove “an advertisement” and instead use “a communication regarding the lawyer’s services” in both sentences. (at 83 and 85).

4) The SGC did not object to the proposed changes to the general prohibition on recommending a lawyer’s services currently found in subsection(c). (92-93) New language in subsection (c) adds “compensate” and “promise” along with the current term “give.” Two new exceptions to the general prohibition in subsection (c) are added. One new exception allows referrals of clients to another lawyer or non-lawyer professional under an agreement that is not otherwise prohibited under the rules, is not exclusive, and the client is informed. (104-110) Proposed new commentary language provides guidance on proper disclosure to clients. (323-327). Another new exception permits “nominal gifts” (112-114), which are defined in the proposed new commentary as “not . . . more than a token item as might be given for holidays, or other ordinary social hospitality.” The SGC was concerned that the definition in the commentary is inadequate to guide attorneys in this area, and remains highly subjective. The SGC recommended that the definition be buttressed, perhaps by including a reference to Connecticut General Statutes §1-79(p).

5) The SGC recommended more deliberation before adopting the proposed changes found in subsection (d) of the proposed new rule regarding when a lawyer may state that they are certified as a specialist in a particular field of law. (116-124). The proposed new rule broadens the manner in which the claim can be made by allowing it if the certification is granted “by an organization that has been approved by an appropriate authority of the state or the District of Columbia or a U.S. Territory or that has been accredited by the American Bar Association.” (119-121). Currently, under Rule 7.4A, only the Rules Committee of the Superior Court with the assistance of the Legal Specialization Screening Committee is authorized to approve certification processes, which would then allow attorneys to claim specialization. The proposed language in the new rule will expand the organizations or authority that can certify a lawyer as a specialist.
6) The proposed new commentary entitled, "Communications about Fields of Practice," provides that an attorney can state that they are a "specialist," that they practice a "specialty," or that they "specialize in" a particular field of law based on the lawyer's experience, specialized training or education. (334-340). This language is incongruous with the proscription on use of these words found in current Rule 7.4A(a), a rule that would remain should the proposed new rules be adopted. This conflict would need to be reconciled. The current process provides for an objective evaluation and verification whether an attorney is truly a specialist, while the new rule provides a subjective standard. The broad implications of the proposed new rule should be given greater consideration before adoption.

7) The SGC did not object to the language that would substitute "communication" for "advertisement" and require "contact information" be included with an attorney name. (126-128). The commentary to the proposed new rules defines "contact information" to include "a website address, a telephone number, an email address or a physical office location." (361-364).

8) The SGC agreed with the CBA that language in Rule 7.2(f) and (g) be retained. (137-154). These provisions are not in the proposal submitted by the ABA. The language should be changed to "every communication" or "every communication about a lawyer's services." (137). In subsection (g) the terms "advertises" and "advertisement" should be changed to "communicates" and "communications" respectively. (at 149 and 152).

9) The SGC did not object to removing subsection (h). (156-160).

10) The SGC did not object to deleting Rule 7.2(i) and relocating some of those provisions to the commentary. (217-224). The Committee recommended that the provisions of 7.2(i) be moved into Practice Book §2-28A(b)(1).

11) The SGC recommended that the language found in current Rule 7.2(j) be retained or inserted in the new commentary. (197-202). The language of Rule 7.2(j) is specific to Connecticut and is a relatively recent modification. It permits attorneys to participate in internet matching services and exempts them from the Rule 7.2(d) requirement that an attorney name appear on advertisements. Matching services do not list participating attorneys' names until the attorney decides to participate or respond to an inquiry made by a consumer. Retaining this section allows attorneys to participate provided the matching service complies with the other Rules. The current rule also provides that the name of a lawyer must be provided if the lawyer referral service provides an exclusive referral to the lawyer for a particular practice area or geographical area.

12) The SGC did not object to revising the commentary language and removing...
the first and third paragraphs, which are policy statements. (206-215 and 226-236).

13) The SGC noted that in the commentary the current “Record of Advertising” will need to be changed to “Record of Communication.” (241).

14) In the CBA proposal, the word “qualified” is inserted in connection with lawyer referral services. (290). The SGC noted that there is no known authority in Connecticut that approves a “qualified lawyer referral service.” The SGC did not object to new language in the commentary that permits participation in directory listings and group advertisements and the payment of internet based leads, and lists the qualifications required before participating in such a service. (273-284).

Rule 7.3:

1) The SGC did not object to the new definition of “solicitation” and its placement into the rule rather than the commentary. (370-373). The term “solicitation” is substituted for the term “communication” throughout the rule. (405-410).

2) The SGC did not object to the newly proposed exceptions to person-to-person contact as they are similar to the current rule. (375-395). The SGC recommended, however, the retention of the language in current Rule 7.3(b)(1) that prohibits person-to-person solicitation with persons the lawyer should reasonably know are physically, emotionally or mentally unfit to receive them. The commentary to the proposed new rule prohibits person-to-person contact with individuals who may be especially vulnerable to coercion or duress, such as the elderly, the disabled or people who do not speak English. (564-570). The Committee concluded that this language was not sufficient and that the current language found in Rule 7.3(b)(1) should be retained.

3) The terms “communication,” “written communication” and “electronic communication” found in Rule 7.3(c)(3), (d) and (e) need to be changed to “solicitation.” (at 409, 423 and 426).

4) The SGC agreed with the CBA that language currently found in Rule 7.3(b)(5) that restricts communication for forty days in personal injury and wrongful death matters should be retained. The forty day “cooling off” provision is not part of the ABA proposal.

5) The SGC also agreed that the labeling of targeted communications with the term “advertising material,” currently found in Rule 7.3(c) should be retained. The SGC noted that if the modifications to Rule 7.3 are adopted, then the proper citation to this subsection would be Rule 7.3(c), not (d) as indicated in the proposed new rule. (426).
6) The SGC had no objection to the new subsection (d) that provides that communications “authorized by law or ordered by a court or other tribunal” are permitted. (423-424). This language is presently found in the commentary to the current Rule 7.2

7) The SGC did not object to the removal of current subsections (d) through (h), which dictate certain requirements for written communications such as envelopes, letter size and disclosure of referral information. (443-465).

8) The SGC noted that in line 511 of the commentary the phrase “do not” is stated twice.

9) The SGC did not object to new language in the commentary regarding participation in group or prepaid legal plans. (572-583).

Rules 7.4, 7.4A, 7.4B, 7.4C:

1) The SGC did not object to deleting Rule 7.4 and its commentary and subsuming them into the commentary to the new Rule 7.2. (334-345).

2) Rules 7.4A, 7.4B and 7.4C are not found in the ABA Model Rules and are not addressed in the CBA’s proposal. The Committee notes that these Rules provide what areas of practice a lawyer can be certified as a specialist and the procedure to qualify organizations to certify attorneys as specialists as overseen by the Legal Specialization Screening Committee. The Committee recommends that these rules remain unless the Rules Committee wishes to significantly change the authority of the Legal Specialization Screening Committee.

Rule 7.5:

1) The SGC did not object to deleting Rule 7.5 and its commentary and subsuming most of it into the commentary to the new Rule 7.1. (49-72).

We thank the Rules Committee for its consideration of the SGC’s comments. Please let us know if you have any questions.

Very truly yours,

Michael P. Bowler
Statewide Bar Counsel

Judicial Branch Website: www.jud.ct.gov
Changes to Connecticut Rules of Professional Conduct, Rules 7.1, 7.2, 7.3, 7.4 and 7.5 incorporating the August 2018 Changes to Rules 7.1, 7.2, 7.3, 7.4 and 7.5 of the Model Rules of Professional Conduct

Sections in Bold indicate sections currently part of the Connecticut RPC but without a counterpart in the Model Rules (before or after the August 2018 amendments) and which are recommended to be retained.

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.

OFFICIAL COMMENTARY

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. Statements, even if literally true, that are misleading truthful statements 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 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 also is misleading if presented in a way that leads a reasonable person to believe the lawyer's communication requires that person to take further action when, in fact, no action is required.

An advertisement 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 services or fees with the services or fees 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.

It is professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit or misrepresentation. Rule 8.4(3). See also Rule 8.4 (5) for the prohibition against stating or implying an ability to improperly influence improperly-a
government agency or official or to achieve results by means that violate the Rules of Professional Conduct.

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.

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

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.

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.
Rule 7.2: Advertising Communications Concerning a Lawyer's Services:

Specific Cases

(a) Subject to the requirements set forth in Rules 7.1 and 7.3, a lawyer may advertise communicate information regarding the lawyer's services through written, recorded, or electronic communication, including public any media.

(b)(1) A copy or recording of an advertisement or communication shall be kept for three years after its last dissemination along with a record of when and where it was used. An electronic advertisement or communication shall be copied once every three months on a compact disc or similar technology and kept for three years after its last dissemination.

(2) A lawyer shall comply with the mandatory filing requirement of Practice Book Section 2-28A.

(c) 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 cost of advertisements or communications permitted by this Rule;

(2) pay the usual charges of a not-for-profit or qualified lawyer referral service. A qualified lawyer referral service is a lawyer referral service that has been approved by an appropriate regulatory authority;

(3) pay for a law practice in accordance with Rule 1.17.

(4) 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

(5) 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.

(d) A lawyer shall not state or imply that a lawyer is certified as a specialist in a particular field of law, unless:

(1) the lawyer has been certified as a specialist by an organization that has been approved by an appropriate authority of the state or the District of Columbia or a U.S. Territory or that has been accredited by the American Bar Association; and
(2) the name of the certifying organization is clearly identified in the communication.

(2d) Any advertisement or communication made under this Rule must include the name and contact information of at least one lawyer admitted in Connecticut responsible for its content. In the case of television advertisements, the name, address and telephone number of the lawyer admitted in Connecticut shall be displayed in bold print for fifteen seconds or the duration of the commercial, whichever is less, and shall be prominent enough to be readable.

(e) Advertisements on the electronic media such as television and radio may contain the same factual information and illustrations as permitted in advertisements in the print media.

(f) Every advertisement and written communication that contains information about the lawyer's fee, including those indicating that the charging of a fee is contingent on outcome, or that no fee will be charged in the absence of a recovery, or that the fee will be a percentage of the recovery, shall disclose whether and to what extent the client will be responsible for any court costs and expenses of litigation. The disclosure concerning court costs and expenses of litigation shall be in the same print size and type as the information regarding the lawyer's fee and, if broadcast, shall appear for the same duration as the information regarding the lawyer's fee. If the information regarding the fee is spoken, the disclosure concerning court costs and expenses of litigation shall also be spoken.

(g) A lawyer who advertises a specific fee or range of fees for a particular service shall honor the advertised fee or range of fees for at least ninety days unless the advertisement specifies a shorter period; provided that, for advertisements in the yellow pages of telephone directories or other media not published more frequently than annually, the advertised fee or range of fees shall be honored for no less than one year following publication.

(h) No lawyers shall directly or indirectly pay all or part of the cost of an advertisement by a lawyer not in the same firm unless the advertisement discloses the name and address of the nonadvertising lawyer, and whether the advertising lawyer may refer any case received through the advertisement to the nonadvertising lawyer.

(i) The following information in advertisements and written communications shall be presumed not to violate the provisions of Rule 7.1:

(j) Subject to the requirements of Rule 7.3, the name of the lawyer or law firm, a listing of lawyers associated with the firm, office addresses and telephone numbers, office and telephone service hours, fax numbers, website and e-mail
addresses and domain names, and a designation such as "attorney" or "law firm."

(2) Date of admission to the Connecticut bar and any other bars and a listing of federal courts and jurisdictions where the lawyer is licensed to practice.

(3) Technical and professional licenses granted by the state or other recognized licensing authorities.

(4) Foreign language ability.

(5) Fields of law in which the lawyer practices or is designated, subject to the requirements of Rule 7.4, or is certified pursuant to Rule 7.4A.

(6) Prepaid or group-legal-service plans in which the lawyer participates.

(7) Acceptance of credit cards.

(8) Fee for initial consultation and fee schedule.

(9) A listing of the name and geographic location of a lawyer or law firm as a sponsor of a public-service announcement or charitable, civic or community program or event.

(10) Nothing in this Rule prohibits a lawyer or law firm from permitting the inclusion in the law directories intended primarily for the use of the legal profession of such information as has traditionally been included in these publications.

(j) Notwithstanding the provisions of subsection (d), a lawyer and service may participate in an internet based client to lawyer matching service, provided the service otherwise complies with the Rules of Professional Conduct. If the service provides an exclusive referral to a lawyer or law firm for a particular practice area in a particular geographical region, then the service must comply with subsection (d).

OFFICIAL COMMENTARY

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...
Nevertheless, advertising by lawyers entails the risk of practices that are misleading or overreaching.

This Rule permits public dissemination of information concerning a lawyer 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 fees are determined, including prices for specific services and payment and credit arrangements; whether and to what extent the client will be responsible for any court costs and expenses of litigation; 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.

Questions of effectiveness and taste in advertising are matters of speculation and subjective judgment. Some jurisdictions have had extensive prohibitions against television advertising 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 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.

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

Record of Advertising. Subsection (b) requires that a record of the content and use of advertising be kept in order to facilitate enforcement of this Rule. It does not require that advertising be subject to review prior to dissemination. Such a requirement would be burdensome and expensive relative to its possible benefits, and may be of doubtful constitutionality.

Paying Others to Recommend a Lawyer. Except as permitted under subsection (c)(1) through (c)(35), 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. Directory listings and group advertisements that list lawyers by practice area, without more, do not constitute impermissible "recommendations."

Subsection (c)(1), however, allows a lawyer to pay for advertising and communications permitted by this Rule, including the costs of print directory listings, online directory listings, newspaper advertisements, television and radio airtime, domain-name registrations, sponsorship fees, advertisements, 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 employees or spokespersons, and website designers. See also Rule 5.3 (duties of lawyers and law firms with respect to the conduct of nonlawyers); Rule 8.4(a) (duty to avoid violating the Rules through the acts of another).

Paragraph (c)(5) 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.

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) (duty to avoid violating the Rules through the acts of another).

A lawyer may pay the usual charges of a legal service plan or a not-for-profit or qualified 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. Such qualified referral services are understood by the public to be consumer oriented organizations that provide unbiased referrals to lawyers with appropriate experience in the subject matter of the representation and afford other client protections, such as complaint procedures or malpractice insurance requirements. Consequently, this Rule only permits a lawyer to pay the usual charges of a not-for-profit or qualified lawyer referral service. A qualified lawyer referral service is one that is approved by an appropriate regulatory authority as affording adequate protections for the public. See, e.g., the American Bar Association's Model Supreme Court Rules Governing Lawyer Referral Services and Model Lawyer Referral and Information Service Quality Assurance Act (requiring that organizations that are identified as lawyer referral services: [i] permit the participation of all lawyers who are licensed and eligible to practice in the jurisdiction and who meet reasonable objective eligibility requirements as may be established by the referral service for the protection of the public; [ii] require each participating lawyer to carry reasonably adequate malpractice insurance; [iii] act reasonably to assess client satisfaction and
address client complaints; and [iv] do not make referrals to lawyers who own, operate or are employed by the referral service).

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. 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.

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. Paragraph (a) 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 "specially," 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.

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.

This Rule 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 authority of a state, the District of Columbia or a U.S. Territory or accredited by the American Bar Association or another organization, such as a state supreme court or a
§51 state bar association that has been approved by the authority of the state, the District of Columbia or a U.S. Territory 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 ensure that a lawyer's recognition as a specialist is meaningful and reliable. To ensure 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.

Required Contact Information. 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.
Rule 7.3. Solicitation of Clients

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

(b) A lawyer shall not solicit professional employment by initiate personal, live telephone, or real-time electronic person-to-person contact, including telemarketing contact, when a significant motive for the lawyer's doing so is the lawyer's or law firm's pecuniary gain for the purpose of obtaining professional employment, except in the following circumstances unless the contact is:

(1) With a lawyer or a person who has, if the target of the solicitation is a family, close personal or prior business or professional relationship with the lawyer, friend, relative, former client or one whom the lawyer reasonably believes to be a client;

(2) Under the auspices of a public or charitable legal services organization;

(3) Under the auspices of a bona fide political, social, civic, fraternal, employee or trade organization whose purposes include but are not limited to providing or recommending legal services, if the legal services are related to the principal purposes of the organization;

(4) With, if the target of the solicitation is a person who routinely uses for business purposes the type of legal services offered by the lawyer or with a business organization, a not-for-profit organization or governmental body and the lawyer seeks to provide services related to the organization.

(bc) A lawyer shall not contact or send a written or electronic communication to any person for the purpose of obtaining solicitation professional employment even when not otherwise prohibited by paragraph (b) if:

(1) The lawyer knows or reasonably should know that the physical, emotional or mental state of the person makes it unlikely that the person would exercise reasonable judgment in employing a lawyer;

(2) The target of the solicitation has it has been made known to the lawyer a desire not to be solicited by that the person does not want to receive such communications from the lawyer;

(3) The communication solicitation involves coercion, duress, fraud, overreaching, harassment, intimidation or undue influence;
(4) The written communication concerns a specific matter and the lawyer
knows or reasonably should know that the person to whom the communication is
directed is represented by a lawyer in the matter; or

(5) The written or electronic communication concerns an action for
personal injury or wrongful death or otherwise relates to an accident or disaster
involving the person to whom the communication is addressed or a relative of
that person, unless the accident or disaster occurred more than forty days prior
to the mailing of the communication, or the recipient is a person or entity within the
scope of subsection (b) of this Rule.

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

(e) Every written communication, as well as any communication by audio
or video recording, or other electronic means, used by a lawyer for the purpose of
obtaining professional employment from anyone known to be in need of legal
services in a particular matter, must be clearly and prominently labeled
“Advertising Material” in red ink on the first page of any written communication
and the lower left corner of the outside envelope or container, if any, and at the
beginning and ending of any communication by audio or video recording or other
electronic means. If the written communication is in the form of a self-mailing
brochure or pamphlet, the label “Advertising Material” in red ink shall appear on
the address panel of the brochure or pamphlet. Communications
solicited by clients or any other person, or the recipient is a person or entity
within the scope of subsection (b) of this Rule, the communication need not
contain such marks. No reference shall be made in the communication to the
communication having any kind of approval from the Connecticut bar. Such
written communications shall be sent only by regular United States mail, not by
registered mail or other forms of restricted delivery.

(d) The first sentence of any written communication concerning a specific
matter shall be: “If you have already retained a lawyer for this matter, please
disregard this letter.”

(e) A written communication seeking employment in a specific matter shall
not reveal on the envelope, or on the outside of a self-mailing brochure or
pamphlet, the nature of the legal matter.

(f) If a contract for representation is mailed with the communication, the top
of each page of the contract shall be marked “Sample” in bold letters in red ink in
a type size one size larger than the largest type used in the contract and the
words “Do Not Sign” in bold letters shall appear on the client signature line.

(g) Written communications shall be on letter-sized paper rather than legal-sized
paper and shall not be made to resemble legal pleadings or other legal
documents. This provision does not preclude the mailing of brochures and pamphlets.

(h) If a lawyer other than the lawyer whose name or signature appears on the communication will actually handle the case or matter, or if the case or matter will be referred to another lawyer or law firm, any written communication concerning a specific matter shall include a statement so advising the target of the solicitation.

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

OFFICIAL COMMENTARY

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 Paragraph (b) prohibits a lawyer from soliciting professional employment by live person-to-person contact when a significant motive for the lawyer's doing so is the lawyer's or the law firm's pecuniary gain. A lawyer's communication is 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 electronic searches.

"Live person-to-person contact" means 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. Such person-to-person contact does not include chat rooms, text messages or other written communications that recipients may easily disregard. A potential for overreaching exists when a lawyer, seeking pecuniary gain, solicits a person known to be in need of legal services. This form of contact subjects 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 to fully evaluate all available alternatives with reasoned judgment and appropriate self-interest in the face of the lawyer's presence and insistence upon an immediate response. The situation is fraught with the possibility of undue influence, intimidation, and over-reaching. Unrestricted solicitation involves definite social harms. Among these are harassment, overreaching, provocation of nuisance litigation and schemes for systematic fabrication of claims, all of which were experienced prior to adoption of restrictions on solicitation. Measures reasonably designed to suppress these harms are constitutionally legitimate. At the same time, measures going beyond
realization of such objectives would appear to be invalid under relevant decisions of the United States Supreme Court.

The potential for abuse overreaching inherent in direct-in-person, live telephone or real-time electronic solicitation live person-to-person contact 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 live person-to-person direct-in-person, telephone or real-time electronic persuasion that may overwhelm a person's judgment.

The use of general advertising and written, recorded and electronic communications to transmit information from lawyer to the public, rather than direct-in-person, live telephone, or real-time electronic contact, will help to ensure that the information flows clearly 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 live person-to-person direct-in-person, live telephone, or real-time electronic contact can be disputed and may are not be subject to a 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.

There is far less likelihood that a lawyer would engage in overreaching abusive practices against a former client, or a person with whom the lawyer has a close personal, or family business or professional relationship, or in situations in which the lawyer is motivated by considerations other than the lawyer's pecuniary gain. Nor is there a serious potential for overreaching abuse when the person contacted is a lawyer or is known to routinely use the type of legal services involved for business purposes. Examples include persons who routinely hire outside counsel to represent the entity, entrepreneurs who regularly engage business, employment law or intellectual property lawyers; small business proprietors who routinely hire lawyers for lease or contract issues, and other people who routinely retain lawyers for business transactions or formations. Consequently, the general prohibition in Rule 7.3(a) and the requirements of Rule 7.3(c) are not applicable in those situations. Paragraph (b). Also, nothing in this Commentary 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.
In determining whether a contact is permissible under Rule 7.3(b), it is relevant to consider the time and circumstances under which the contact is initiated. For example, a person undergoing active medical treatment for traumatic injury is unlikely to be in an emotional state in which reasonable judgment about employing a lawyer can be exercised. Moreover, if after sending a letter or other communication to a member of the public as permitted by Rule 7.2 the lawyer receives no response, any further effort to communicate with the person may violate the provisions of Rule 7.3(b).

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 any person known to be in need of legal services within the meaning of this Rule.

A solicitation that contains false or misleading information within the meaning of Rule 7.1, that involves coercion, duress or harassment within the meaning of Rule 7.3 (c)(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(c)(1) is prohibited. Live, person-to-person contact of individuals who may be especially vulnerable to coercion or duress is ordinarily not appropriate, for example, the elderly, those whose first language is not English, or the disabled.

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 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. Subsection (e) of this Rule would permit an attorney to participate with an organization which 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.

Communications authorized by law or ordered by a court or tribunal include a notice to potential members of a class in class action litigation.

Subsection (e) 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, subsection (i) 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 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 ensure that the plan sponsors are in compliance with Rules 7.1, 7.2 and 7.3(b).
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 a substantially similar designation.

(d) A lawyer shall not state or imply that the lawyer is a specialist in a particular field of law except as provided herein and in Rule 7.4A.

OFFICIAL COMMENTARY

This Rule permits a lawyer to indicate fields of practice in communications about the lawyer's services. If a lawyer practices only in certain fields, or will not accept matters except in such fields, the lawyer is permitted so to indicate. A lawyer may indicate that the lawyer "concentrates in," "focuses on," or that the practice is "limited to" particular fields of practice as long as the statements are not false or misleading in violation of Rule 7.1. However, the lawyer may not use the terms "specialist," "certified," "board-certified," "expert" or any similar variation, unless the lawyer has been certified in accordance with Rule 7.4A.

Recognition of specialization in patent matters is a matter of long-established policy of the Patent and Trademark Office. Designation of admiralty practice has a long historical tradition associated with maritime commerce and the federal courts.
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 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.

(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.

OFFICIAL COMMENTARY

A firm may be designated by the names of all or some of its members, by the names of deceased members where there has been a continuing succession in the firm's identity or by a trade name such as the "ABC Legal Clinic." 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 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 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 not associated with the firm or a predecessor of the firm.

With regard to subsection (d), lawyers sharing office facilities, but who are not in fact partners, may not denominate themselves as, for example, "Smith and Jones," for that title suggests partnership in the practice of law.