

7-9

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.**

Del Ciampo, Joseph

To: Del Ciampo, Joseph
Subject: FW: Proposal to amend Rules 7.1-7.5 of the Connecticut Rules of Professional Conduct

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

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**STATE OF CONNECTICUT
JUDICIAL BRANCH**

STATEWIDE GRIEVANCE COMMITTEE

Michael P. Bowler, *Statewide Bar Counsel*

*287 Main Street
Second Floor – Suite Two
East Hartford, CT 06118-1885
(860) 568-5157 Fax (860) 568-4953
Judicial Branch Website: www.jud.ct.gov*

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(e), 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

1 Changes to Connecticut Rules of Professional Conduct, Rules 7.1, 7.2, 7.3, 7.4 and 7.5
2 incorporating the August 2018 Changes to Rules 7.1, 7.2, 7.3, 7.4 and 7.5 of the Model
3 Rules of Professional Conduct
4

5 Sections in Bold indicate sections currently part of the Connecticut RPC but without a
6 counterpart in the Model Rules (before or after the August 2018 amendments) and
7 which are recommended to be retained.
8
9

10 **Rule 7.1. Communications Concerning a Lawyer's Services**

11

12 A lawyer shall not make a false or misleading communication about the lawyer or
13 the lawyer's services. A communication is false or misleading if it contains a material
14 misrepresentation of fact or law, or omits a fact necessary to make the statement
15 considered as a whole not materially misleading.
16

17 OFFICIAL COMMENTARY

18

19 This Rule governs all communications about a lawyer's services, including
20 advertising ~~permitted by Rule 7.2~~. Whatever means are used to make known a lawyer's
21 services, statements about them must be truthful. ~~Statements, even if literally true, that~~
22 ~~are misleading truthful statements are also prohibited by this Rule.~~ A truthful
23 statement is misleading if it omits a fact necessary to make the lawyer's communication
24 considered as a whole not materially misleading. A truthful statement is also misleading
25 if ~~there is a substantial likelihood exists~~ that it will lead a reasonable person to formulate
26 a specific conclusion about the lawyer or the lawyer's services for which there is no
27 reasonable factual foundation. A truthful statement also is misleading if presented in a
28 way that leads a reasonable person to believe the lawyer's communication requires that
29 person to take further action when, in fact, no action is required.
30

31 ~~An advertisement communication~~ that truthfully reports a lawyer's achievements
32 on behalf of clients or former clients may be misleading if presented so as to lead a
33 reasonable person to form an unjustified expectation that the same results could be
34 obtained for other clients in similar matters without reference to the specific factual and
35 legal circumstances of each client's case. Similarly, an unsubstantiated claim about a
36 lawyer's or law firm's services or fees, or an unsubstantiated comparison of the lawyer's
37 services or fees with the services or fees those of other lawyers or law firms may be
38 misleading if presented with such specificity as would lead a reasonable person to
39 conclude that the comparison or claim can be substantiated. The inclusion of an
40 appropriate disclaimer or qualifying language may preclude a finding that a statement is
41 likely to create unjustified expectations or otherwise mislead the public.
42

43 It is professional misconduct for a lawyer to engage in conduct involving
44 dishonesty, fraud, deceit or misrepresentation. Rule 8.4(3). See also Rule 8.4 (5) for the
45 prohibition against stating or implying an ability to improperly influence ~~improperly a~~

46 government agency or official or to achieve results by means that violate the Rules of
47 Professional Conduct.

48

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

62

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

65

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

69

70 It is misleading to use the name of a lawyer holding a public office in the name of
71 a law firm, or in communications on the law firm's behalf, during any substantial period
72 in which the lawyer is not actively and regularly practicing with the firm.

73

74

75

76 **Rule 7.2: Advertising Communications Concerning a Lawyer's Services:**
77 **Specific Cases**

78
79 ~~(a) Subject to the requirements set forth in Rules 7.1 and 7.3, a lawyer may~~
80 ~~advertise~~communicate information regarding the lawyer's services through written,
81 ~~recorded or electronic communication, including public any media.~~

82
83 **(b)(1) A copy or recording of an advertisement or communication shall be**
84 **kept for three years after its last dissemination along with a record of when and**
85 **where it was used. An electronic advertisement or communication shall be copied**
86 **once every three months on a compact disc or similar technology and kept for**
87 **three years after its last dissemination.**

88
89 **(2) A lawyer shall comply with the mandatory filing requirement of Practice**
90 **Book Section 2-28A.**

91
92 (c) A lawyer shall not compensate, give or promise anything of value to a person
93 for recommending the lawyer's services, except that a lawyer may:

94
95 (1) pay the reasonable cost of advertisements or communications permitted by
96 this Rule;

97
98 (2) pay the usual charges of a not-for-profit or qualified lawyer referral service. ~~A~~
99 ~~qualified lawyer referral service is a lawyer referral service that has been approved by~~
100 ~~an appropriate regulatory authority;~~

101
102 (3) pay for a law practice in accordance with Rule 1.17.

103
104 (4) refer clients to another lawyer or a nonlawyer professional pursuant to an
105 agreement not otherwise prohibited under these Rules that provides for the other
106 person to refer clients or customers to the lawyer, if:

107
108 (i) the reciprocal referral agreement is not exclusive; and

109
110 (ii) the client is informed of the existence and nature of the agreement; and

111
112 (5) give nominal gifts as an expression of appreciation that are neither intended
113 nor reasonably expected to be a form of compensation for recommending a lawyer's
114 services.

115
116 (d) A lawyer shall not state or imply that a lawyer is certified as a specialist in a
117 particular field of law, unless:

118
119 (1) the lawyer has been certified as a specialist by an organization that has
120 been approved by an appropriate authority of the state or the District of Columbia or a
121 U.S. Territory or that has been accredited by the American Bar Association; and

122
123 (2) the name of the certifying organization is clearly identified in the
124 communication.

125
126 ~~(ed)~~ Any advertisement or communication made underpursuant to this Rule
127 mustshall include the name and contact information of at least one lawyer admitted in
128 Connecticut responsible for its content. In the case of television advertisements, the
129 name, address and telephone number of the lawyer admitted in Connecticut shall be
130 displayed in bold print for fifteen seconds or the duration of the commercial, whichever
131 is less, and shall be prominent enough to be readable.

132
133 ~~(e)~~ Advertisements on the electronic media such as television and radio may
134 contain the same factual information and illustrations as permitted in advertisements in
135 the print media.

136
137 **(f) Every advertisement and written communication that contains**
138 **information about the lawyer's fee, including those indicating that the charging of**
139 **a fee is contingent on outcome, or that no fee will be charged in the absence of a**
140 **recovery, or that the fee will be a percentage of the recovery, shall disclose**
141 **whether and to what extent the client will be responsible for any court costs and**
142 **expenses of litigation. The disclosure concerning court costs and expenses of**
143 **litigation shall be in the same print size and type as the information regarding the**
144 **lawyer's fee and, if broadcast, shall appear for the same duration as the**
145 **information regarding the lawyer's fee. If the information regarding the fee is**
146 **spoken, the disclosure concerning court costs and expenses of litigation shall**
147 **also be spoken.**

148
149 **(g) A lawyer who advertises a specific fee or range of fees for a particular**
150 **service shall honor the advertised fee or range of fees for at least ninety days**
151 **unless the advertisement specifies a shorter period; provided that, for**
152 **advertisements in the yellow pages of telephone directories or other media not**
153 **published more frequently than annually, the advertised fee or range of fees shall**
154 **be honored for no less than one year following publication.**

155
156 ~~(h)~~ No lawyers shall directly or indirectly pay all or part of the cost of an
157 advertisement by a lawyer not in the same firm unless the advertisement
158 discloses the name and address of the nonadvertising lawyer, and whether the
159 advertising lawyer may refer any case received through the advertisement to the
160 nonadvertising lawyer.

161
162 ~~(i)~~ The following information in advertisements and written
163 communications shall be presumed not to violate the provisions of Rule 7.1:

164
165 ~~(1)~~ Subject to the requirements of Rule 7.3, the name of the lawyer or law
166 firm, a listing of lawyers associated with the firm, office addresses and telephone
167 numbers, office and telephone service hours, fax numbers, website and e-mail

168 addresses and domain names, and a designation such as "attorney" or "law
169 firm."

170
171 (2) ~~Date of admission to the Connecticut bar and any other bars and a
172 listing of federal courts and jurisdictions where the lawyer is licensed to practice.~~

173
174 (3) ~~Technical and professional licenses granted by the state or other
175 recognized licensing authorities.~~

176
177 (4) ~~Foreign language ability.~~

178
179 (5) ~~Fields of law in which the lawyer practices or is designated, subject to
180 the requirements of Rule 7.4, or is certified pursuant to Rule 7.4A.~~

181
182 (6) ~~Prepaid or group legal service plans in which the lawyer participates.~~

183
184 (7) ~~Acceptance of credit cards.~~

185
186 (8) ~~Fee for initial consultation and fee schedule.~~

187
188 (9) ~~A listing of the name and geographic location of a lawyer or law firm as
189 a sponsor of a public service announcement or charitable, civic or community
190 program or event.~~

191
192 (10) ~~Nothing in this Rule prohibits a lawyer or law firm from permitting the
193 inclusion in the law directories intended primarily for the use of the legal
194 profession of such information as has traditionally been included in these
195 publications.~~

196
197 (j) ~~Notwithstanding the provisions of subsection (d), a lawyer and service
198 may participate in an internet based client to lawyer matching service, provided
199 the service otherwise complies with the Rules of Professional Conduct. If the
200 service provides an exclusive referral to a lawyer or law firm for a particular
201 practice area in a particular geographical region, then the service must comply
202 with subsection (d).~~

203 204 **OFFICIAL COMMENTARY**

205
206 To assist the public in learning about and obtaining legal services, lawyers
207 should be allowed to make known their services not only through reputation but also
208 through organized information campaigns in the form of advertising. Advertising
209 involves an active quest for clients, contrary to the tradition that a lawyer should not
210 seek clientele. However, the public's need to know about legal services can be fulfilled
211 in part through advertising. This need is particularly acute in the case of persons of
212 moderate means who have not made extensive use of legal services. The interest in
213 expanding public information about legal services ought to prevail over considerations

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

216
217 This Rule permits public dissemination of information concerning a lawyer or law
218 firm's name or firm name, address, email address, website, and telephone number; the
219 kinds of services the lawyer will undertake; the basis on which the lawyer's fees are
220 determined, including prices for specific services and payment and credit arrangements;
221 whether and to what extent the client will be responsible for any court costs and
222 expenses of litigation; lawyer's foreign language ability; names of references and, with
223 their consent, names of clients regularly represented; and other information that might
224 invite the attention of those seeking legal assistance.

225
226 Questions of effectiveness and taste in advertising are matters of speculation
227 and subjective judgment. Some jurisdictions have had extensive prohibitions against
228 television advertising and other forms of advertising, against advertising going beyond
229 specified facts about a lawyer, or against "undignified" advertising. Television, the
230 Internet, and other forms of electronic communication are now among the most powerful
231 media for getting information to the public, particularly persons of low and moderate
232 income; prohibiting television, Internet, and other forms of electronic advertising,
233 therefore, would impede the flow of information about legal services to many sectors of
234 the public. Limiting the information that may be advertised has a similar effect and
235 assumes that the bar can accurately forecast the kind of information that the public
236 would regard as relevant.

237
238 Neither this Rule nor Rule 7.3 prohibits communications authorized by law, such
239 as notice to members of a class in class action litigation.

240
241 **Record of Advertising. Subsection (b) requires that a record of the content**
242 **and use of advertising be kept in order to facilitate enforcement of this Rule. It**
243 **does not require that advertising be subject to review prior to dissemination.**
244 **Such a requirement would be burdensome and expensive relative to its possible**
245 **benefits, and may be of doubtful constitutionality.**

246
247 **Paying Others to Recommend a Lawyer.** Except as permitted under
248 subsection (c)(1) through (c)(35), lawyers are not permitted to pay others for
249 recommending the lawyer's services or for channeling professional work in a manner
250 that violates Rule 7.3. A communication contains a recommendation if it endorses or
251 vouches for a lawyer's credentials, abilities, competence, character, or other
252 professional qualities. Directory listings and group advertisements that list lawyers by
253 practice area, without more, do not constitute impermissible "recommendations."

254
255 Subsection (c)(1), however, allows a lawyer to pay for advertising and
256 communications permitted by this Rule, including the costs of print directory listings, on-
257 line directory listings, newspaper advertisements, television and radio airtime, domain-
258 name registrations, sponsorship fees, advertisements, Internet-based advertisements,
259 and group advertising. A lawyer may compensate employees, agents and vendors who

260 are engaged to provide marketing or client development services, such as publicists,
261 public-relations personnel, business development staff, television and radio employees
262 or spokespersons, and website designers. See also Rule 5.3 (duties of lawyers and law
263 firms with respect to the conduct of nonlawyers); Rule 8.4(a) (duty to avoid violating the
264 Rules through the acts of another).

265
266 Paragraph (c)(5) permits lawyers to give nominal gifts as an expression of
267 appreciation to a person for recommending the lawyer's services or referring a
268 prospective client. The gift may not be more than a token item as might be given for
269 holidays, or other ordinary social hospitality. A gift is prohibited if offered or given in
270 consideration of any promise, agreement or understanding that such a gift would be
271 forthcoming or that referrals would be made or encouraged in the future.

272
273 A lawyer may pay others for generating client leads, such as Internet-based
274 client leads, as long as the lead generator does not recommend the lawyer, any
275 payment to the lead generator is consistent with Rules 1.5(e) (division of fees) and 5.4
276 (professional independence of the lawyer), and the lead generator's communications
277 are consistent with Rule 7.1 (communications concerning a lawyer's services). To
278 comply with Rule 7.1, a lawyer must not pay a lead generator that states, implies, or
279 creates a reasonable impression that it is recommending the lawyer, is making the
280 referral without payment from the lawyer, or has analyzed a person's legal problems
281 when determining which lawyer should receive the referral. See Comment [2] (definition
282 of "recommendation"). See also Rule 5.3 (duties of lawyers and law firms with respect to
283 the conduct of nonlawyers); Rule 8.4(a) (duty to avoid violating the Rules through the
284 acts of another).

285
286 A lawyer may pay the usual charges of a legal service plan or a not-for-profit or
287 qualified lawyer referral service. A legal service plan is a prepaid or group legal service
288 plan or a similar delivery system that assists people who seek to secure legal
289 representation. A lawyer referral service, on the other hand, is any organization that
290 holds itself out to the public as a lawyer referral service. Such Qualified referral services
291 are understood by the public to be consumer oriented organizations that provide
292 unbiased referrals to lawyers with appropriate experience in the subject matter of the
293 representation and afford other client protections, such as complaint procedures or
294 malpractice insurance requirements. Consequently, this Rule only permits a lawyer to
295 pay the usual charges of a not-for-profit or qualified lawyer referral service. A qualified
296 lawyer referral service is one that is approved by an appropriate regulatory authority as
297 affording adequate protections for the public. See, e.g., the American Bar Association's
298 Model Supreme Court Rules Governing Lawyer Referral Services and Model Lawyer
299 Referral and Information Service Quality Assurance Act (requiring that organizations
300 that are identified as lawyer referral services: [i] permit the participation of all lawyers
301 who are licensed and eligible to practice in the jurisdiction and who meet reasonable
302 objective eligibility requirements as may be established by the referral service for the
303 protection of the public; [ii] require each participating lawyer to carry reasonably
304 adequate malpractice insurance; [iii] act reasonably to assess client satisfaction and

305 address client complaints; and [iv] do not make referrals to lawyers who own, operate or
306 are employed by the referral service).

307
308 A lawyer who accepts assignments or referrals from a legal service plan or
309 referrals from a lawyer referral service must act reasonably to assure that the activities
310 of the plan or service are compatible with the lawyer's professional obligations. See
311 Rule 5.3. Legal service plans and lawyer referral services may communicate with the
312 public, but such communication must be in conformity with these Rules. Thus,
313 advertising must not be false or misleading, as would be the case if the communications
314 of a group advertising program or a group legal services plan would mislead the public
315 to think that it was a lawyer referral service sponsored by a state agency or bar
316 association. ~~Nor could the lawyer allow in-person, telephonic, or real-time contacts that~~
317 ~~would violate Rule 7.3.~~

318
319 A lawyer also may agree to refer clients to another lawyer or a nonlawyer
320 professional, in return for the undertaking of that person to refer clients or customers to
321 the lawyer. Such reciprocal referral arrangements must not interfere with the lawyer's
322 professional judgment as to making referrals or as to providing substantive legal
323 services. See Rules 2.1 and 5.4(c). Except as provided in Rule 1.5(e), a lawyer who
324 receives referrals from a lawyer or nonlawyer professional must not pay anything solely
325 for the referral, but the lawyer does not violate paragraph (b) of this Rule by agreeing to
326 refer clients to the other lawyer or nonlawyer professional, so long as the reciprocal
327 referral agreement is not exclusive and the client is informed of the referral agreement.
328 Conflicts of interest created by such arrangements are governed by Rule 1.7.
329 Reciprocal referral agreements should not be of indefinite duration and should be
330 reviewed periodically to determine whether they comply with these Rules. This Rule
331 does not restrict referrals or divisions of revenues or net income among lawyers within
332 firms comprised of multiple entities.

333
334 **Communications about Fields of Practice.** Paragraph (a) of this Rule permits
335 a lawyer to communicate that the lawyer does or does not practice in particular areas of
336 law. A lawyer is generally permitted to state that the lawyer "concentrates in" or is a
337 "specialist," practices a "specialty," or "specializes in" particular fields based on the
338 lawyer's experience, specialized training or education, but such communications are
339 subject to the "false and misleading" standard applied in Rule 7.1 to communications
340 concerning a lawyer's services.

341
342 The Patent and Trademark Office has a long-established policy of designating
343 lawyers practicing before the Office. The designation of Admiralty practice also has a
344 long historical tradition associated with maritime commerce and the federal courts. A
345 lawyer's communications about these practice areas are not prohibited by this Rule.

346
347 This Rule permits a lawyer to state that the lawyer is certified as a specialist in a
348 field of law if such certification is granted by an organization approved by an appropriate
349 authority of a state, the District of Columbia or a U.S. Territory or accredited by the
350 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
§52 Columbia or a U.S. Territory to accredit organizations that certify lawyers as specialists.
§53 Certification signifies that an objective entity has recognized an advanced degree of
§54 knowledge and experience in the specialty area greater than is suggested by general
§55 licensure to practice law. Certifying organizations may be expected to apply standards
§56 of experience, knowledge and proficiency to ensure that a lawyer's recognition as a
§57 specialist is meaningful and reliable. To ensure that consumers can obtain access to
§58 useful information about an organization granting certification, the name of the certifying
§59 organization must be included in any communication regarding the certification.

360

§61 **Required Contact Information.** This Rule requires that any communication
§62 about a lawyer or law firm's services include the name of, and contact information for,
§63 the lawyer or law firm. Contact information includes a website address, a telephone
§64 number, an email address or a physical office location.

365

366

367

368 **Rule 7.3. Solicitation of Clients**

369
370 (a) "Solicitation" or "solicit" denotes a communication initiated by or on behalf of a
371 lawyer or law firm that is directed to a specific person the lawyer knows or reasonably
372 should know needs legal services in a particular matter and that offers to provide, or
373 reasonably can be understood as offering to provide, legal services for that matter.
374

375 (b) A lawyer shall not solicit professional employment by initiate personal, live
376 telephone, or real-time electronic person-to-person contact, including telemarketing
377 contact, when a significant motive for the lawyer's doing so is the lawyer's or law firm's
378 pecuniary gain for the purpose of obtaining professional employment, except in the
379 following circumstances unless the contact is:
380

381 (1) With a lawyer or a person who has If the target of the solicitation is a family,
382 close personal or prior business or professional relationship with the lawyer friend,
383 relative, former client or one whom the lawyer reasonably believes to be a client;
384

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

386
387 **(3) Under the auspices of a bona fide political, social, civic, fraternal,**
388 **employee or trade organization whose purposes include but are not limited to**
389 **providing or recommending legal services, if the legal services are related to the**
390 **principal purposes of the organization;**
391

392 (4) With If the target of the solicitation is a person who routinely uses for business
393 purposes the type of legal services offered by the lawyer or with a **business**
394 **organization, a not-for-profit organization or governmental body and the lawyer**
395 **seeks to provide services related to the organization.**
396

397 (bc) A lawyer shall not contact or send a written or electronic communication to
398 any person for the purpose of obtaining solicit professional employment even when not
399 otherwise prohibited by paragraph (b) if:
400

401 (1) The lawyer knows or reasonably should know that the physical,
402 emotional or mental state of the person makes it unlikely that the person would
403 exercise reasonable judgment in employing a lawyer;
404

405 (2) The target of the solicitation has It has been made known to the lawyer a
406 desire not to be solicited by that the person does not want to receive such
407 communications from the lawyer;
408

409 (3) The communications solicitation involves coercion, duress, fraud,
410 overreaching, harassment, intimidation or undue influence;
411

412 ~~(4) The written communication concerns a specific matter and the lawyer~~
413 ~~knows or reasonably should know that the person to whom the communication is~~
414 ~~directed is represented by a lawyer in the matter; or~~
415

416 **(53) The written or electronic communication concerns an action for**
417 **personal injury or wrongful death or otherwise relates to an accident or disaster**
418 **involving the person to whom the communication is addressed or a relative of**
419 **that person, unless the accident or disaster occurred more than forty days prior**
420 **to the mailing of the communication, or the recipient is a person or entity within the**
421 **scope of subsection (b) of this Rule.**
422

423 (d) This Rule does not prohibit communications authorized by law or ordered by
424 a court or other tribunal.
425

426 **(ed) Every written communication, as well as any communication by audio**
427 **or video recording, or other electronic means, used by a lawyer for the purpose of**
428 **obtaining professional employment from anyone known to be in need of legal**
429 **services in a particular matter, must be clearly and prominently labeled**
430 **“Advertising Material” in red ink on the first page of any written communication**
431 **and the lower left corner of the outside envelope or container, if any, and at the**
432 **beginning and ending of any communication by audio or video recording or other**
433 **electronic means. If the written communication is in the form of a self-mailing**
434 **brochure or pamphlet, the label “Advertising Material” in red ink shall appear on**
435 **the address panel of the brochure or pamphlet. Communications Brochures**
436 **solicited by clients or any other person, or the recipient is a person or entity**
437 **within the scope of subsection (b) of this Rule, the communication need not**
438 **contain such marks. No reference shall be made in the communication to the**
439 **communication having any kind of approval from the Connecticut bar. Such**
440 **written communications shall be sent only by regular United States mail, not by**
441 **registered mail or other forms of restricted delivery.**
442

443 ~~(d) The first sentence of any written communication concerning a specific~~
444 ~~matter shall be: “If you have already retained a lawyer for this matter, please~~
445 ~~disregard this letter.”~~
446

447 ~~(e) A written communication seeking employment in a specific matter shall~~
448 ~~not reveal on the envelope, or on the outside of a self-mailing brochure or~~
449 ~~pamphlet, the nature of the legal matter.~~
450

451 ~~(f) If a contract for representation is mailed with the communication, the top~~
452 ~~of each page of the contract shall be marked “Sample” in bold letters in red ink in~~
453 ~~a type size one size larger than the largest type used in the contract and the~~
454 ~~words “Do Not Sign” in bold letters shall appear on the client signature line.~~
455

456 ~~(g) Written communications shall be on letter-sized paper rather than legal-~~
457 ~~sized paper and shall not be made to resemble legal pleadings or other legal~~

458 documents. This provision does not preclude the mailing of brochures and
459 pamphlets.

460
461 ~~(h) If a lawyer other than the lawyer whose name or signature appears on~~
462 ~~the communication will actually handle the case or matter, or if the case or matter~~
463 ~~will be referred to another lawyer or law firm, any written communication~~
464 ~~concerning a specific matter shall include a statement so advising the target of~~
465 ~~the solicitation.~~

466
467 (ie) Notwithstanding the prohibitions in this Rulesubsection (a), a lawyer may
468 participate with a prepaid or group legal service plan operated by an organization not
469 owned or directed by the lawyer which uses ~~in-person or telephone live person-to-~~
470 ~~person contact to solicit~~roll memberships or ~~sell~~ subscriptions for the plan from
471 persons who are not known to need legal services in a particular matter covered by the
472 plan.

473 474 OFFICIAL COMMENTARY

475
476 A solicitation is a targeted communication initiated by the lawyer² that is directed
477 to a specific person and that offers to provide, or can reasonably be understood as
478 offering to provide, legal services. In contrast, a Paragraph (b) prohibits a lawyer from
479 soliciting professional employment by live person-to-person contact when a significant
480 motive for the lawyer's doing so is the lawyer's or the law firm's pecuniary gain. A
481 lawyer's communication is typically does not constitute a solicitation if it is directed to the
482 general public, such as through a billboard, an Internet banner advertisement, a website
483 or a television commercial, or if it is in response to a request for information or is
484 automatically generated in response to Internetelectronic searches.

485
486 "Live person-to-person contact" means in-person, face-to-face, live telephone
487 and other real-time visual or auditory person-to-person communications where the
488 person is subject to a direct personal encounter without time for reflection. Such person-
489 to-person contact does not include chat rooms, text messages or other written
490 communications that recipients may easily disregard. A potential for overreaching exists
491 when a lawyer, seeking pecuniary gain, solicits a person known to be in need of legal
492 services. This form of contact subjects a person to the private importuning of the trained
493 advocate in a direct interpersonal encounter. The person, who may already feel
494 overwhelmed by the circumstances giving rise to the need for legal services, may find it
495 difficult to fully evaluate all available alternatives with reasoned judgment and
496 appropriate self-interest in the face of the lawyer's presence and insistence upon an
497 immediate response. The situation is fraught with the possibility of undue influence,
498 intimidation, and over-reaching. Unrestricted solicitation involves definite social harms.
499 Among these are harassment, overreaching, provocation of nuisance litigation and
500 schemes for systematic fabrication of claims, all of which were experienced prior to
501 adoption of restrictions on solicitation. Measures reasonably designed to suppress
502 these harms are constitutionally legitimate. At the same time, measures going beyond

503 realization of such objectives would appear to be invalid under relevant decisions of the
504 United States Supreme Court.

505
506 The potential for abuse ~~overreaching~~ inherent in direct in-person, live telephone
507 or real-time electronic solicitation ~~live person-to-person contact~~ justifies ~~its~~ their
508 prohibition, particularly since lawyers have alternative means of conveying necessary
509 information to those who may be in need of legal services. In particular,
510 communications can be mailed or transmitted by email or other electronic means that
511 do not involve real-time contact and do not violate other laws governing solicitations.
512 These forms of communications and solicitations make it possible for the public to be
513 informed about the need for legal services, and about the qualifications of available
514 lawyers and law firms, without subjecting the public to ~~live person-to-person~~ direct in-
515 person, telephone or real-time electronic persuasion that may overwhelm a person's
516 judgment.

517
518 The use of general advertising and written, recorded and electronic
519 communications to transmit information from lawyer to the public, rather than direct in-
520 person, live telephone, or real-time electronic contact, will help to ensure that the
521 information flows cleanly as well as freely. The contents of advertisements and
522 communications permitted under Rule 7.2 can be permanently recorded so that they
523 cannot be disputed and may be shared with others who know the lawyer. This potential
524 for informal review is itself likely to help guard against statements and claims that might
525 constitute false and misleading communications, in violation of Rule 7.1. The contents
526 of ~~live person-to-person~~ direct in-person, live telephone, or real-time electronic contact
527 can be disputed and may are not be subject to a third-party scrutiny. Consequently, they
528 are much more likely to approach (and occasionally cross) the dividing line between
529 accurate representations and those that are false and misleading.

530
531 There is far less likelihood that a lawyer would engage in ~~overreaching~~ abusive
532 practices against a former client, or a person with whom the lawyer has a close
533 personal, or family business or professional relationship, or in situations in which the
534 lawyer is motivated by considerations other than the lawyer's pecuniary gain. Nor is
535 there a serious potential for ~~overreaching~~ abuse when the person contacted is a lawyer
536 or is known to routinely use the type of legal services involved for business purposes.
537 Examples include persons who routinely hire outside counsel to represent the entity;
538 entrepreneurs who regularly engage business, employment law or intellectual property
539 lawyers; small business proprietors who routinely hire lawyers for lease or contract
540 issues; and other people who routinely retain lawyers for business transactions or
541 formations. Consequently, the general prohibition in Rule 7.3(a) and the requirements
542 of Rule 7.3(c) are not applicable in those situations. Paragraph (b). Also, nothing in this
543 Commentary is not intended to prohibit a lawyer from participating in constitutionally
544 protected activities of public or charitable legal service organizations or bona fide
545 political, social, civic, fraternal, employee or trade organizations whose purposes
546 include providing or recommending legal services to their members or beneficiaries.
547

548 In determining whether a contact is permissible under Rule 7.3(b), it is
549 relevant to consider the time and circumstances under which the contact is
550 initiated. For example, a person undergoing active medical treatment for
551 traumatic injury is unlikely to be in an emotional state in which reasonable
552 judgment about employing a lawyer can be exercised. Moreover, if after sending a
553 letter or other communication to a member of the public as permitted by Rule 7.2
554 the lawyer receives no response, any further effort to communicate with the
555 person may violate the provisions of Rule 7.3(b).

556
557 The requirement in Rule 7.3(c) that certain communications be marked
558 "Advertising Material" does not apply to communications sent in response to
559 requests of potential clients or their spokespersons or sponsors. General
560 announcements by lawyers, including changes in personnel or office location, do
561 not constitute communications soliciting professional employment from any
562 person known to be in need of legal services within the meaning of this Rule.

563
564 A solicitation that contains false or misleading information within the meaning of
565 Rule 7.1, that involves coercion, duress or harassment within the meaning of Rule 7.3
566 (c)(2), or that involves contact with someone who has made known to the lawyer a
567 desire not to be solicited by the lawyer within the meaning of Rule 7.3(c)(1) is
568 prohibited. Live, person-to-person contact of individuals who may be especially
569 vulnerable to coercion or duress is ordinarily not appropriate, for example, the elderly,
570 those whose first language is not English, or the disabled.

571
572 This Rule is ~~does not intended to prohibit~~ a lawyer from contacting
573 representatives of organizations or groups that may be interested in establishing a
574 group or prepaid legal plan for their members, insureds, beneficiaries or other third
575 parties for the purpose of informing such entities of the availability of and details
576 concerning the plan or arrangement which the lawyer or lawyer's firm is willing to offer.
577 This form of communication is not directed to people who are seeking legal services for
578 themselves. Rather, it is usually addressed to an individual acting in a fiduciary capacity
579 seeking a supplier of legal services for others who may, if they choose, become
580 prospective clients of the lawyer. Under these circumstances, the activity which the
581 lawyer undertakes in communicating with such representatives and the type of
582 information transmitted to the individual are functionally similar to and serve the same
583 purpose as advertising permitted under Rule 7.2. ~~Subsection (i) of this Rule would~~
584 ~~permit an attorney to participate with an organization which uses personal contact to~~
585 ~~solicit members for its group or prepaid legal service plan, provided that the personal~~
586 ~~contact is not undertaken by any lawyer who would be a provider of legal services~~
587 ~~through the plan.~~

588
589 Communications authorized by law or ordered by a court or tribunal include a
590 notice to potential members of a class in class action litigation.

591
592 Subsection (e) of this Rule permits a lawyer to participate with an organization
593 that uses personal contact to solicit members for its group or prepaid legal service plan,

594 provided that the personal contact is not undertaken by any lawyer who would be a
595 provider of legal services through the plan. The organization must not be owned by or
596 directed (whether as manager or otherwise) by any lawyer or law firm that participates
597 in the plan. For example, subsection (i) would not permit a lawyer to create an
598 organization controlled directly or indirectly by the lawyer and use the organization for
599 the in-person or telephone solicitation of legal employment of the lawyer through
600 memberships in the plan or otherwise. The communication permitted by these
601 organizations also must not be directed to a person known to need legal services in a
602 particular matter, but is to be designed to inform potential plan members generally of
603 another means of affordable legal services. Lawyers who participate in a legal service
604 plan must reasonably ensure that the plan sponsors are in compliance with Rules 7.1,
605 7.2 and 7.3(b). ~~See 8.4(a).~~
606
607

608 **Rule 7.4. Communication of Fields of Practice**

609
610 (a) A lawyer may communicate the fact that the lawyer does or does not practice
611 in particular fields of law.

612
613 (b) A lawyer admitted to engage in patent practice before the United States
614 Patent and Trademark Office may use the designation "Patent Attorney" or a
615 substantially similar designation.

616
617 (c) A lawyer engaged in admiralty practice may use the designation "Admiralty,"
618 "Proctor in Admiralty" or a substantially similar designation.

619
620 (d) A lawyer shall not state or imply that the lawyer is a specialist in a particular
621 field of law except as provided herein and in Rule 7.4A.

622 **OFFICIAL COMMENTARY**

623
624
625 This Rule permits a lawyer to indicate fields of practice in communications about
626 the lawyer's services. If a lawyer practices only in certain fields, or will not accept
627 matters except in such fields, the lawyer is permitted so to indicate. A lawyer may
628 indicate that the lawyer "concentrates in," "focuses on," or that the practice is "limited to"
629 particular fields of practice as long as the statements are not false or misleading in
630 violation of Rule 7.1. However, the lawyer may not use the terms "specialist," "certified,"
631 "board certified," "expert" or any similar variation, unless the lawyer has been certified in
632 accordance with Rule 7.4A.

633
634 Recognition of specialization in patent matters is a matter of long established
635 policy of the Patent and Trademark Office. Designation of admiralty practice has a long
636 historical tradition associated with maritime commerce and the federal courts.

639 **Rule 7.5. Firm Names and Letterheads**

640
641 (a) A lawyer shall not use a firm name, letterhead or other professional
642 designation that violates Rule 7.1. A trade name may be used by a lawyer in private
643 practice if it does not imply a connection with a government agency or with a public or
644 charitable legal services organization and is not otherwise in violation of Rule 7.1.

645
646 (b) A law firm with offices in more than one jurisdiction may use the same name
647 in each jurisdiction, but identification of the lawyers in an office of the firm shall indicate
648 the jurisdictional limitations on those not licensed to practice in the jurisdiction where the
649 office is located.

650
651 (c) The name of a lawyer holding a public office shall not be used in the name of
652 a law firm, or in communications on its behalf, during any substantial period in which the
653 lawyer is not actively and regularly practicing with the firm.

654
655 (d) Lawyers may state or imply that they practice in a partnership or other
656 organization only when that is the fact.

657 **OFFICIAL COMMENTARY**

658
659 A firm may be designated by the names of all or some of its members, by the
660 names of deceased members where there has been a continuing succession in the
661 firm's identity or by a trade name such as the "ABC Legal Clinic." Although the United
662 States Supreme Court has held that legislation may prohibit the use of trade names in
663 professional practice, use of such names in law practice is acceptable so long as it is
664 not misleading. If a private firm uses a trade name that includes a geographical name
665 such as "Springfield Legal Clinic," an express disclaimer that it is a public legal aid
666 agency may be required to avoid a misleading implication. It may be observed that any
667 firm name including the name of a deceased partner is, strictly speaking, a trade name.
668 The use of such names to designate law firms has proven a useful means of
669 identification. However, it is misleading to use the name of a lawyer not associated with
670 the firm or a predecessor of the firm.

671
672
673 With regard to subsection (d), lawyers sharing office facilities, but who are not in
674 fact partners, may not denominate themselves as, for example, "Smith and Jones," for
675 that title suggests partnership in the practice of law.