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**Del Ciampo, Joseph**

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**To:** RC 2018/2019 Members  
**Subject:** Comments by the Office of the Reporter of Judicial Decisions

Dear Judges,

Attached are comments received from Attorneys Adam Schibley and Jean Cummings, Assistant Reporters of Judicial Decisions, to comport with the 2019 Practice Book certain Practice Book Revisions Being Considered by the Rules Committee of the Superior Court, appearing in the Connecticut Law Journal of April 23, 2019, and other technical changes. The proposed revisions by the Reporter's office correct certain internal references, capitalization, and grammatical errors and track the Committee's proposals against the correct version of certain rules and commentaries, so that proposed additions and deletions are properly identified.

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# Rule 7.1

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] those of other lawyers or law firms may be misleading if presented with such specificity as would lead a reasonable person to conclude that the comparison or claim can be substantiated. The inclusion of an appropriate disclaimer or qualifying language may preclude a finding that a statement is likely to create unjustified expectations or otherwise mislead the public.

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.

or other law

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

## Rule 7.2

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 list<sup>ings</sup>, on-line 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).

Pursuant to subsection (c) (4), 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 subsection (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.

Subsection (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 the value of the gift is more than \$50, or otherwise indicates a sharing of either legal fees or the ultimate recovery in the referred case, or if the gift is 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

# Rule 7.3

the mailing of the [communication] solicitation, 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.

~~[(c)](e)~~ Every written [communication] solicitation, as well as any [communication] solicitation 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] solicitation and the lower left corner of the outside envelope or container, if any, and at the beginning and ending of any [communication] solicitation by audio or video recording or other electronic means. If the written [communication] solicitation 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. [Brochures] Communications solicited by clients or any other person, or if the recipient is a person or entity within the scope of subsection (b) of this Rule, the solicitation need not contain such marks. No reference shall be made in the [communication] solicitation to the [communication] solicitation having any kind of approval from the Connecticut bar. Such written [communications] solicitations shall be sent only by regular United States mail, not by registered mail or other forms of restricted delivery.

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bition in Rule 7.3 (a) and the requirements of Rule 7.3 (c) are not applicable in those situations. Also, nothing in this Commentary] Sub-section (b) 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

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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) (f) 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.

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This Rule [is] ~~does~~ 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 (i) 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.]~~

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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 [(i)](f) 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)](f) 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). [See 8.4(a).]

AMENDMENT NOTE: The purpose of the amendments to Rules 7.1-7.5 and to Section 2-28A is to incorporate the 2018 amendments to the American Bar Association's Model Rules of Professional Conduct concerning attorney advertising.

**[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.

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counseling with respect thereto; practice before federal and state courts and governmental agencies.

(28) Workers' compensation: The practice of law dealing with the representation of parties before federal and state agencies, boards and courts in actions to determine eligibility for workers' compensation, and disability.

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AMENDMENT NOTE: The purpose of the amendments to Rules 7.1-7.5 and to Section 2-28A is to incorporate the 2018 amendments to the American Bar Association's Model Rules of Professional Conduct concerning attorney advertising.

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**Rule 7.4C. Application by Board or Entity to Certify Lawyers as Specialists**

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Any board or entity seeking the approval of the Rules Committee of the superior court for authority to certify lawyers practicing in this state as being specialists in a certain field or fields of law as set forth in Rule 7.4A (e), shall file [an original and six copies of] its application with the Legal Specialization Screening Committee pursuant to Rule 7.4~~§~~ on form JD-ES-63. The application materials shall be filed in a format prescribed by the Legal Specialization Screening Committee, which may require them to be filed electronically.

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AMENDMENT NOTE: The amendment to this rule removes an inconsistency between the language of the first and second sentences of this rule, and clarifies that the Legal Specialization Screening Committee will prescribe the format of the application submission, rather than to have the rule require the application to be filed in multiple hard copies. This amendment is also consistent with the Regulations of the

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tion that has been established in any state or territory of the United States or the District of Columbia to certify and approve continuing legal education courses; and any other nonprofit or for-profit legal education providers, including law schools and other appropriate continuing legal education providers, and including courses remotely presented by video conference, webcasts, webinars, or the like by said providers.

(2) By self-study of appropriate programs or courses directly related to substantive or procedural law or related topics, including professional responsibility, legal ethics, or law office management and prepared by those continuing legal education providers in subsection (b) (1). Said self-study may include viewing and listening to all manner of communication, including, but not limited to, video or audio recordings or taking online legal courses. The selection of self-study courses or programs shall be consistent with the objective of this rule, which is to maintain and enhance the skill level, knowledge, ethics and competence of the attorney and shall comply with the minimum quality standards set forth in subsection (c) (6).

(3) By publishing articles in legal publications that have as their primary goal the enhancement of competence in the legal profession, including, without limitation, substantive and procedural law, ethics, law practice management and professionalism.

(4) By teaching legal seminars and courses, including the participation on panel discussions as a speaker or moderator.

(5) By serving as a full-time faculty member at a law school accredited by the American Bar Association, in which case, such attorney

or approved by the state  
bar examining committee

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(7) By serving as a judge or coach for a moot court or mock trial course or competition that is part of the curriculum at or sanctioned by a law school accredited by the American Bar Association or approved by the state bar examining committee.

will be credited with meeting the minimum continuing legal education requirements set forth herein.

(6) By serving as a part-time or adjunct faculty member at a law school accredited by the American Bar Association, in which case, such attorney will be credited with meeting the minimum continuing legal education requirements set forth herein at the rate of one hour for each hour of classroom instruction

or approved by the state bar examining committee

and one hour for each two hours of preparation

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(c) Credit computation:

Credit for the activity listed in subsection (b) (7) shall be based upon the actual judging or coaching time, up to four hours for each activity per year.

(1) Credit for any of the above activities shall be based on the actual instruction time, which may include lecture, panel discussion, and question and answer periods. Self-study credit shall be based on the reading time or running time of the selected materials or program.

(2) Credit for attorneys preparing for and presenting legal seminars, courses or programs shall be based on one hour of credit for each two hours of preparation. A maximum of six hours of credit may be credited for preparation of a single program. Credit for presentation shall be on an hour for hour basis. Credit may not be earned more than once for the same course given during a ~~twelve-month period~~

calendar year

(3) Credit for the writing and publication of articles shall be based on the actual drafting time required. Each article may be counted only one time for credit.

(4) Continuing legal education courses ordered pursuant to Section 2-37 (a) (5) or any court order of discipline shall not count as credit toward an attorney's obligation under this section.

(5) Attorneys may carry forward no more than two credit hours in excess of the current annual continuing legal education requirement