

FILE NO. ADM10-8005

STATE OF MINNESOTA

IN SUPREME COURT

In Re Petition to Amend Rule 7 of the
Minnesota Rules of Professional Conduct.

**PETITION OF THE LAWYERS
PROFESSIONAL RESPONSIBILITY
BOARD**

TO: THE HONORABLE JUSTICES OF THE SUPREME COURT OF THE
STATE OF MINNESOTA:

Petitioners, Lawyers Professional Responsibility Board (LPRB) and the Director of the Office of Lawyers Professional Responsibility (Director), respectfully request this Court to adopt the amendment to Rule 7, Minnesota Rules of Professional Conduct (MRPC), as set forth below. In support of this petition, petitioners would show the Court the following:

INTRODUCTION

1. Petitioner LPRB is a Board established by this Court to oversee the lawyer discipline system. Petitioner Director is appointed by this Court to oversee the lawyer discipline system and seek enforcement of the MRPC.

2. This Court has the exclusive and inherent power and duty to administer justice and adopt rules of practice and procedure before the courts of this state and to establish standards for regulating the legal profession. This power has been expressly recognized by the Legislature. *See* Minn. Stat. § 480.05.

3. This Court has adopted the MRPC to establish standards of conduct for lawyers licensed to practice law in the State of Minnesota. The MRPC, as adopted by this Court in 1985, are based upon the Model Rules of Professional Conduct (Model

Rules) published by the American Bar Association (ABA), as adapted and modified by the Court to conform to Minnesota standards and practices.

4. From time to time, the ABA has amended its Model Rules to adapt them to changing conditions and expectations in society and in the practice of law. When it has done so, petitioner LPRB has studied the amendments through its committee, and made recommendations to this Court on whether, and in what form, the amendments to the Model Rules should be incorporated into the MRPC. Petitioners have petitioned this Court to amend the MRPC to conform to changes in the Model Rules in 2003 and 2014. This Court has also amended the MRPC from time-to-time for good cause shown.

5. For the reasons set forth below, petitioners request this Court adopt the proposed amendment to Rule 7, MRPC, and the Comments thereto, as set forth in Attachment A.

BACKGROUND

6. In August 2018, the ABA amended Rule 7 of its Model Rules, which governs lawyer advertising and communications. The ABA significantly reworked Rule 7 of the Model Rules, eliminating what it believed were unnecessary provisions, and addressing changes in technology and the legal profession since the rule was first adopted. Following the ABA's amendments to Rule 7 of the Model Rules, petitioner LPRB's Rules Committee (LPRB Rules Committee) studied the amendments to determine whether to recommend that the LPRB petition the Court to amend Rule 7, MRPC, to conform to the ABA's amendments to Rule 7. The LPRB Rules Committee also considered the benefits of adopting Rule 7 of the Model Rules in its entirety, including any provisions not previously adopted by this Court when it adopted Rule 7, MRPC.

7. The LPRB Rules Committee also worked closely with the Minnesota State Bar Association (MSBA) and its Standing Committee on the Rules of Professional Conduct in considering adoption of Rule 7 of the Model Rules. Based on its review of

the ABA amended changes to Rule 7 of the Model Rules, the Rules Committee and the MSBA determined that adoption of Rule 7 of the Model Rules would benefit the legal community by providing uniformity and clarity to Minnesota attorneys. The LPRB Rules Committee recommended that the LPRB petition the Court to adopt the amended Rule 7 and Comments thereto of the ABA Model Rules.

8. On April 26, 2019, the LPRB considered and approved amending Rule 7, MRPC, to conform to the ABA amendments, and voted in favor of authorizing the filing of this petition.

9. In June 2019, the MSBA Assembly met to consider the language in Rule 7.2(c) of the amended ABA Model Rules governing when attorneys may refer to themselves as “certified specialists.” The MSBA Assembly voted to delete the words “certified as” in the first line of Rule 7.2(c) of the Model Rules, effectively prohibiting attorneys who are not certified from referring to themselves as specialists. This departed from the ABA amendments to the Model Rules, which allowed attorneys to refer to themselves as “specialist” based on years of experience, education and focus on a specialized practice, even if such attorneys were not certified. The MSBA otherwise agreed that all other provisions under the amended Rule 7 of the Model Rules and the Comments thereto should be adopted.

10. On September 27, 2019, the LPRB considered the MSBA Assembly’s proposed amendment to Rule 7.2(c) of the Model Rules to delete the words “certified as.” The LPRB preferred the broader language as set forth in the Model Rules and therefore reaffirmed its approval of adopting Rule 7 of the Model Rules in its entirety and without adjustments to Rule 7.2(c). The LPRB voted again to authorize the filing of this petition.

11. Consequently, the LPRB and the MSBA are concurrently filing separate petitions. While both urge this Court to amend Rule 7, MRPC, and the Comments thereto, to conform to Rule 7 of the Model Rules, the LPRB and the MSBA differ on the

single issue of completely adopting the language in Rule 7.2(c) of the Model Rules and the corresponding Comments.

THE NEED FOR THE AMENDMENTS

12. The practice of law has become increasingly complex in the years since the adoption of the Rule 7, MRPC, governing lawyer advertising and solicitation. The profession has experienced substantial growth in the number of law firms that practice on a national or global scale. Many local law practices are becoming absorbed into regional or national law firms. Clients often need legal services in multiple jurisdictions. Lawyers often find themselves competing for business with law firms from outside their own jurisdiction, and against providers outside the legal profession. The jurisdictions that have adopted complex, inconsistent and detailed advertising rules have effectively impeded lawyers' ability to expand their practices and thus potentially thwart clients' interests in obtaining needed services. The proposed rule amendments will free lawyers and clients from these constraints without compromising client protection.

13. One objective of changing Rule 7, MRPC, to conform to the ABA Model Rules, is to harmonize and simplify the advertising and client communication rules by offering a level of uniformity. Rule 8.5(a), MRPC, grants this Court jurisdiction over Minnesota lawyers regardless of where misconduct may occur. The Court is also empowered to regulate lawyers licensed in other jurisdictions if those lawyers provide or offer to provide legal services in Minnesota. Rule 8.5(b), MRPC, provides that depending on the circumstances, the choice of law may include the Rules of Professional Conduct in this jurisdiction or other jurisdictions. Changes in the legal profession, including an increasing multijurisdictional practice and the potential need to apply the rules of numerous jurisdictions, make uniformity in rules that govern advertisement and solicitation increasingly necessary to ensure and encourage compliance and consistent enforcement.

14. The updated rules on advertisement also cover the changes in how lawyers advertise and solicit since Rule 7, MRPC, was first adopted. Changes in technology, particularly the advent and increased use of social media, have enabled clients and lawyers to find and communicate with each other in various new ways. The proposed amendments aim to address the changes that have emerged in an ever-evolving technology-based world, while continuing to protect the public. For example, lawyers are no longer limiting themselves to traditional ads or direct mailing campaigns to market their services; the practice is seeing an increase in the use of social media, such as blogs, websites, Twitter, Facebook, and LinkedIn, to advertise and market an attorney's services. As the use of social media to advertise and market has become the new norm across all industries, the public has also become more savvy about the use of social media as an advertising tool. These proposed amendments to Rule 7 are necessary to address the impact changes in technology and the digital age have had on how lawyers now market themselves to solicit business.

15. The proposed amendments also address the trends in the development of First Amendment law and antitrust law that disfavor regulation of truthful communication about the availability of professional services. For over 40 years, the federal courts have recognized that lawyer advertising is commercial speech protected by the First Amendment. *See Bates v. Arizona*, 433 U.S. 350 (1977) (establishing attorneys' First Amendment right to advertise as commercial speech, but supporting state regulation of attorney advertising that is false, deceptive or misleading).

16. Since Rule 7 of the Model Rules was first adopted, more recent cases have emerged, questioning the constitutionality of state regulations that are overly broad and impede upon an attorney's commercial speech rights. Rules that broadly restrict the ability of lawyers to truthfully communicate information about their qualifications and their practices have been successfully challenged as infringement on speech. *See Alexander v. Cahill*, 598 F.3d 79 (2nd Cir. 2010) (held New York's regulation to be

unconstitutional as a categorical ban that prohibited the use of the irrelevant attention-getting techniques unrelated to attorney competence); *Public Citizen, Inc. v. Louisiana Attorney Disciplinary Bd.*, 632 F.3d 212, 229 (5th Cir. 2011) (held Louisiana's revised attorney advertising rule improperly infringed on commercial speech rights because restrictions were overly broad and failed to apply least restrictive means to protect the government's interest); *Searcy v. Florida Bar*, 140 F. Supp. 3d 1290, 1299 (N.D. Fla. 2015) (enjoining the Florida Bar from enforcing its rule requiring an attorney to be board certified before advertising expertise in an area of law). The amendments to Rule 7 should be adopted to eliminate overly broad and unnecessary restrictions on speech, thereby limiting the risk of a constitutional challenge to Rule 7, MRPC.

17. The amended Rule 7 also addresses antitrust concerns stemming from overreaching limits on attorney advertisement. For nearly 20 years, the Federal Trade Commission (FTC) has actively opposed lawyer regulation where such regulations would restrict consumer access to factually accurate information regarding the availability of lawyer services. The FTC has reminded regulators in Alabama, Arizona, Florida, Indiana, Louisiana, New Jersey, New Mexico, New York, Ohio, Tennessee, and Texas that overly broad advertising restrictions may reduce competition, violate federal antitrust laws, and impermissibly restrict truthful information about legal services. Adoption of Rule 7 of the ABA Model Rules is necessary to eliminate potential antitrust claims that may be raised under the current Rule 7, MRPC, by removing overly broad restrictions.

18. Petitioners recommend adoption of the proposed amended rule because doing so will balance the dual objectives of protecting clients from false and misleading advertising, while avoiding constitutional challenges of infringement on commercial speech. The amended rule will also increase consumer access to accurate information about the availability of legal services by freeing lawyers to use expanding and innovative technologies to communicate the availability of legal services. Finally, by

providing uniformity, amending Rule 7, MRPC, will allow for better understanding and clarification of the rule, which will promote compliance and consistent enforcement.

BRIEF SUMMARY OF THE PROPOSED AMENDMENTS

19. The following are the principal changes to Minnesota's current Rule 7, MRPC, to conform with the amended ABA Model Rules, which petitioners recommend this Court adopt:

a. Rule 7.1: Communications Concerning a Lawyer's Services.

- Principal changes to this subsection are to the Comments, which are amended to address all false and misleading communications inclusive of specific false and misleading communications previously addressed in subsection 7.5, which the ABA amended Model Rules eliminate.

b. Rule 7.2: Advertising.

- Permits nominal "thank you" gifts under certain conditions as an exception to the general prohibition against paying for recommendations;
- Permits the use of a "qualified referral service";
- Adds to this section "certified specialist" language from the deleted Rule 7.4(d) and amends provision to permit lawyers who, by means of experience, specialized training, or education, have attained special competence in a field of law, to state that they are specialists or specialize in that field of law.

c. Rule 7.3: Solicitation of Clients.

- Defines solicitation as "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";
- Removes the requirement that all solicitations clearly and conspicuously include the words "Advertising Material," but continue to prohibit targeted mailings that are misleading, involve coercion,

duress or harassment, or that involve a target of the solicitation who has made known to the lawyer a desire not to be solicited;

- Adds provision specifying that the rule does not prohibit communications authorized by law or ordered by a court or other tribunal.

d. Rule 7.4: Communication of Fields of Practice and Certification.

- Eliminates this subdivision as it relates to communication of fields of practice such as patent and admiralty; addresses false or misleading communications about the same in the amended comments to Rule 7.1, which prohibits false or misleading communication about a lawyer's services;
- Retains an amended "certified specialist" provision of this rule, but moves it to Rule 7.2.

e. Rule 7.5: Firm Names and Letterheads.

- Eliminates this subdivision concerning firm names and letterheads; addresses false or misleading communications about this in the amended comments to Rule 7.1, which prohibits false or misleading communication about a lawyer's services.

DISCUSSION OF THE PROPOSED AMENDMENTS

Rule 7.1: Communications Concerning a Lawyer's Services.

20. Rule 7.1 remains unchanged under the amended Model Rules (*see* Attachment B). The principal changes in Rule 7.1 are in the Comments, which clarify and expound on false and misleading communications in lawyer advertising as well as address potential false and misleading communications formerly covered under the deleted Rule 7.5. Those changes to the comments are as follows:

- a. Comment [2] to Rule 7.1 is amended to clarify that truthful information may be misleading if consumers are led to believe that they must act when, in fact, no action is required.
- b. Comment [3] to Rule 7.1 is amended to replace "advertising" with "communication" to make the Comment consistent with the title and

scope of the rule. The amendment expands the guidance in current Comment [3] by clarifying that an “unsubstantiated claim” may also be misleading.

- c. Comment [4] to Rule 7.1 is updated to also reference Rule 8.4(c), MRPC, which prohibits dishonest, fraudulent, deceptive, or misleading conduct. This is added to the Comment’s current reference to Rule 8.4(e), MRPC, which addresses misconduct in stating or implying an ability to influence government entities or officials.
- d. Comments [5] through [8] have been added to incorporate the black letter concepts from the current Rule 7.5, which has been eliminated under the amended Model Rule. The current Rule 7.5, MRPC, addresses specific prohibitions regarding misleading communications in firm names and letterhead. Because the provisions of current Rule 7.5 are merely examples of possibly misleading communications, those concepts are already addressed by the black letter of Rule 7.1 and, therefore, presented as examples of misleading communication in the Comments to Rule 7.1. This change streamlines Rule 7 by eliminating redundancy or unnecessary language that may cause confusion.

Petitioners recommend adopting the above changes to Rule 7, MRPC, to conform to the ABA Model Rule.

Rule 7.2: Specific Rules on Advertising.

21. Under the amended Model Rules, all specific rules for advertising were consolidated in Rule 7.2 (*see* Attachment C). The rule was amended to namely address constitutional speech concerns, changes in advertising due to media changes, and to consolidate sections that were removed under the amended rule into this subsection.

Petitioners recommend the following changes to Rule 7.2, MRPC, to conform to the ABA Model Rule:

- a. The amendment expands the means by which a lawyer may communicate about the lawyer’s services to include through “any media.” This change recognizes the expansive and ever-evolving ways technology allows attorneys to advertise, solicit and communicate about their services. Such means of communication are no longer limited to “written, recorded or

electronic communications” contained in the previous Model Rule and the current Rule 7.2, MRPC.

- b. Adoption of the amended Rule 7.2 and the Comments thereto would eliminate current Comments [1] and [3]. The reason for elimination of these Comments is that they provide no additional guidance to lawyers in fulfilling their ethical obligations and because advertising is constitutionally protected speech that needs no additional justification.
- c. Amended Comment [2] is updated to explain that the term “recommendations” does not include directories or other group advertising in which lawyers are merely listed by practice area. Amended Comment [3] clarifies that lawyers who advertise on television and radio may compensate “station employees or spokespersons” as reasonable costs for advertising. These costs are well in line with other ordinary costs associated with advertising that are listed in the Comment, i.e., “employees, agents and vendors who are engaged to provide marketing or client development services.”
- d. Adopting the ABA Model Rule would change Rule 7.2(b)(2), MRPC, to permit lawyers to use a “qualified lawyer referral service” in addition to a not-for-profit lawyer referral service. Petitioners find no reason to object to adopting these changes to Rule 7, MRPC, to conform to the ABA Model Rule.
 - i. While this provision is not new to the Model Rules and was not a part of the recent amendments, in order to conform Rule 7, MRPC, to the ABA Model Rule, this change to Rule 7.2(b)(2) and the corresponding Comment [6] should be adopted.
 - ii. The proposed Comment [6] is amended to define “qualified referral services” as “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.”
 - iii. Petitioners request that Comment [6] to Rule 7.2(b)(2) also be amended to specify that in order for a referral service to be considered “qualified,” it must obtain certification to use the ABA Lawyer Referral Logo and Tagline. This will provide clarification

- and guidance to Minnesota lawyers and lawyer referral services as to what it means to be “approved by an appropriate regulatory authority” to be considered a “qualified referral service.”
- iv. In order to receive authorization to use the ABA Lawyer Referral Logo and Tagline, a referral service must undergo an application process that requires it to demonstrate that it is:
 - (1) consumer-oriented; (2) provides unbiased referrals to lawyers with appropriate experience in the subject matter of the representation; and (3) affords other client protections, such as complaint procedures or malpractice insurance requirements. Only after approval by the ABA can a referral service obtain authorization to use the ABA Lawyer Referral Logo and Tagline.
 - v. Defining “qualified referral services” as such will allow the Director to ensure only vetted referral services that meet the ABA Model Rules for qualified referral services meet the definition of “qualified” without adding additional administrative burdens to the Director.
- e. The amended Rule 7.2(b) continues the existing prohibition against giving “anything of value” to someone for recommending a lawyer. The new amended rule, however, adds a new subdivision (b)(5) that contains an exception to the general prohibition against paying for referrals. Petitioners have no objections to adopting these changes to Rule 7, MRPC, to conform to the ABA Model Rule.
- i. This subsection permits lawyers to give a nominal gift to acknowledge a referral—a “thank you” to the person who referred a client to the lawyer. The new provision clearly states that such a nominal gift is permissible only where not expected as payment for a recommendation of the lawyer’s services.
 - ii. New Comment [4] expounds on what is considered nominal, including ordinary social hospitality. It also clarifies that a gift may not be given based on an agreement to receive referrals or to make future referrals. This concept is further supported by the addition of “compensate” and “promise” in Rule 7.2(b), which emphasizes these limitations: the thank you gift cannot be promised in advance and must be no more than a token item, i.e., not “compensation.”

- iii. The proposed additions acknowledge the reality that lawyers frequently give small tokens of appreciation after receiving a referral, and these tokens are neither intended to be a “payment” for the referral nor likely to induce future referrals. Neither is the behavior likely to result in the evils intended to be addressed by the rule: that referral sources might interfere with the independent professional judgment of the lawyer, interject themselves into the lawyer-client relationship, or engage in prohibited solicitation to gain more referrals for which they might be paid. Such token acknowledgements are common in other services industries.

- f. The proposed amendment adds to Rule 7.2 a subsection (c), concerning when lawyers may refer to themselves as a certified specialist. This provision was previously under Rule 7.4(c)(1) and (2), which has been removed (along with the rest of Rule 7.4) under the amended Model Rule, and moved to Rule 7.2 under subsection (c).
 - i. As amended by the ABA, adoption of Rule 7.2(c) of the Model Rules would now allow attorneys to refer to themselves as “specialist” in a particular field of law – without the need for certification – based on the lawyer’s experience, specialized training, or education.
 - ii. This change avoids potential speech restriction claims by removing an unnecessary restriction on truthful commercial speech. It is common knowledge within the bench and bar that many highly qualified lawyers limit their practices to particular fields of law in which they have attained an exceptional degree of competence and respect. These lawyers may be called upon and qualified to give expert testimony about matters within their field. Lawyers and judges commonly refer to such lawyers as “specialists” in their field. The public will not be harmed if lawyers whose education, experience, and specialized training, which qualify them as experts in their field, are allowed to truthfully state that they are specialists.
 - iii. Comment [9] is amended to provide additional guidance on the circumstances under which a lawyer might properly claim specialization by adding to that claim “based on the lawyer’s experience, specialized training or education.” Comment [9] is

also amended to remind attorneys that claims as a “specialist” are subject to the “false and misleading” standard applied in Rule 7.1, thus maintaining a level of protection for consumers, while loosening the rule to allow those who are not certified specialists to call themselves specialists under certain circumstances.

- iv. While Comment [9] makes it clear that a lawyer may truthfully claim that the lawyer is a “specialist” or “specializes in” a particular field of law based upon the lawyer’s experience, specialized training, or education, under the amended Rule 7.2, a lawyer still may not claim to be a “certified specialist” unless the lawyer is in fact certified by an organization described in the rule.
- v. The proposed amendments also describe which entities qualify to certify or accredit lawyers. The Court may choose to substitute the language in current Rule 7.4(c)(2), which specifies the Board of Legal Certification as the accrediting agency for legal specialization programs in Minnesota.
- vi. Petitioners recommend adoption of Rule 7.2(c) of the Model Rules to eliminate overly broad limitations on commercial speech. *See e.g., Searcy v. Florida Bar*, 140 F. Supp. 3d 1290 at 1299 (enjoining the Florida Bar from enforcing its rule requiring an attorney to be board certified before advertising expertise in an area of law).
- g. Amended Model Rule 7 removed subsection 7.4. Most of the black letter provisions under Rule 7.4, however, are now addressed in the addition of Comments [10] and [11] to Rule 7.2 of the amended Model Rule. The removal of Rule 7.4 in the amended Model Rule, the addition of Rule 7.2(c) and Comments [9] to [11] to Rule 7.2, work to streamline and clarify Rule 7 by eliminating the redundancy and overly broad restrictions on commercial speech.

Rule 7.3: Solicitation of Clients.

22. The amendments to Rule 7.3, MRPC, primarily aim to address and accommodate the changes in how people communicate in the ever-evolving digital world (*see* Attachment D). Rule 7.3 of the Model Rules has been amended to offer some clarity and acknowledge technological advances that have changed how lawyers,

clients, and the general public communicate. Petitioners recommend adopting these changes to Rule 7.3, MRPC, to conform to the ABA Model Rule.

- a. Rule 7.3(a) has been added to Model Rule 7 to provide a definition of solicitation. The MRPC do not, and the previous Model Rules did not, define solicitation. The ABA “borrowed” the definition of solicitation from Virginia and it is now defined as: “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. Rule 7.3(b) of the amended rule continues to prohibit direct, in-person solicitation, but clarifies that the prohibition applies solely to live person-to-person contact. Comment [2] to the amended Rule 7.3 adds examples of prohibited solicitation including in-person, face-to-face, telephone, and real-time electronic or other communications which may include through use of applications such as Skype. Added commentary clarifies that prohibited solicitation does not include chat rooms, text messages, or any other written communications to which recipients would not feel undue pressure to respond.
- c. Rule 7.3(b)’s exceptions to prohibited solicitation are slightly broadened under the Model Rule to include a “person who routinely uses for business purposes the type of legal services offered by the lawyer.” Similarly, Comment [5] to the amended Rule 7.3 now explains that the potential for overreaching that justifies the prohibition against in-person solicitation is unlikely to occur when the solicitation is directed toward experienced users of the legal services in a business matter. Conversely, the prohibition is justified, and a lawyer may still not engage in live in-person solicitation, involving personal legal matters, such as criminal defense, family law, or personal injury, even if the person has been represented multiple times.
- d. The amendments keep in place the current Rule 7.3(b)(1) and (2) (but renumbered in the amended rule as 7.3(c)(1) and (2)), which prohibit solicitation when a target has made known his or her desire not to be solicited solicitations that involve coercion, duress, or harassment. These restrictions apply to both live in-person and written solicitations.

- e. The current Rule 7.3(c), MRPC, relating to the requirement that targeted written solicitations be marked as “advertising material,” is deleted in the amended Model Rule. The requirement is no longer necessary because consumers have become accustomed to receiving advertising material via many methods of paper and electronic delivery. Advertising materials are unlikely to mislead consumers simply due to the nature of the communications, and most consumers will not feel any compulsion to view the materials solely because they were sent by a lawyer or law firm. Further, no evidence was produced showing that consumers are harmed by receiving unmarked mail solicitations from lawyers, even if the solicitations are opened by consumers. If the solicitation itself or its contents are misleading, that harm is adequately addressed by Rule 7.1.
- f. The amended Model Rule adds a provision, 7.3(d), specifically providing that the advertising rules do not “prohibit communications authorized by law or ordered by a court or other tribunal.” The concept that solicitations authorized by law or court order are not prohibited under Rule 7 is currently addressed in Comment [4] of Rule 7.2. Under the amended rule, Comment [4] of Rule 7.2 would be deleted and moved to new subdivision (d) of Rule 7.3. This addition would address any First Amendment speech issues that may be raised and addressed by the courts. Moreover, new Comment [8] to Rule 7.3 is added, which gives class action notices as an example of a communication that is authorized by law or court order.

Rule 7.4: Communication of Fields of Practice and Certification.

23. Rule 7.4 was deleted from the amended Model Rule 7 (*see* Attachment E).

In deleting this subsection to Rule 7 of the Model Rules, the ABA consolidated the provisions of this subdivision by adding them to other parts of Rule 7, either as a new subdivision or by addressing the concepts in the Comments as follows:

- a. The amended Model Rule 7 moved subdivisions 7.4(b) and (c) regarding references to a lawyer’s designation in patent or admiralty practice in advertisement, from the black letter to Comments [10] and [11] to Rule 7.2 of the Model Rules. This change would eliminate potential redundancy within the previous Model Rule 7 by consolidating the concept under Rule 7.2.
- b. The amended Model Rule 7 also moved Rule 7.4(c)(1) and (2) of the previous rule, relating to communication about the lawyer’s designation

as a certified specialist, to Rule 7.2(c) of the amended rule. The provision was also amended to clarify circumstances in which a lawyer may claim to be a “certified specialist” and broadened the ability of a lawyer to refer to themselves as a “specialist.” See paragraph 22(f) above.

Petitioners recommend adopting the above changes to Rule 7.4, MRPC, to conform to the ABA Model Rule.

Rule 7.5: Firm Names and Letterheads.

24. The current Rule 7.5, MRPC, addresses specific prohibitions regarding misleading communications in firm names and letterheads. The ABA removed Rule 7.5 from amended Model Rule 7 (see Attachment F) because the provisions of Rule 7.5 are merely examples of possibly misleading communications. Those concepts are already addressed by the black letter of Rule 7.1 and, therefore, in an effort to avoid redundancy and confusion, the previous Rule 7.5 is presented, under the amended Model Rule, as examples of misleading communications in the Comments to Rule 7.1. As discussed in further detail in paragraph 21(d) above, the Comments to Rule 7.1 have been amended in the Model Rule to add Comments [5] through [8] to address the black letter concepts previously contained in the now deleted Rule 7.5. Petitioners recommend deleting Rule 7.5, MRPC, and address those black letter concepts in the Comments to Rule 7.1, MRPC, to conform to the ABA Model Rule.

25. The ABA amended the Model Rules on advertising because, despite the state bars’ best intentions to revise attorney advertising regulations and offer guidance to address today’s digital challenges, attorneys and law firms are caught in a dizzying array of regulations and federal case law, especially if they practice in more than one jurisdiction. By adopting Rule 7 of the ABA Model Rules, Minnesota will simplify and streamline the rules on lawyer advertising. As amended, the rules will better serve the bench, the bar and the public by expanding opportunities for lawyers to use modern communications technology to advertise their services, increasing the public’s access to information about the availability of legal services, and continuing to protect the public.

CONCLUSION

For the foregoing reasons, petitioners Lawyers Professional Responsibility Board and the Director of the Office of Lawyers Professional Responsibility respectfully request this Court to adopt Rule 7 of the ABA Model Rules and the Comments thereto as set forth in Attachment A, and amend the Minnesota Rules of Professional Conduct accordingly.

Respectfully submitted,

/s/ Robin Wolpert

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INFORMATION ABOUT LEGAL SERVICES

RULE 7.1: COMMUNICATIONS CONCERNING A LAWYER'S SERVICES

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

Comment

[1] This rule governs all communications about a lawyer's services, including advertising. Whatever means are used to make known a lawyer's services, statements about them must be truthful.

[2] Misleading truthful statements are prohibited by this rule. A truthful statement is misleading if it omits a fact necessary to make the lawyer's communication considered as a whole not materially misleading. A truthful statement is misleading if a substantial likelihood exists that it will lead a reasonable person to formulate a specific conclusion about the lawyer or the lawyer's services for which there is no reasonable factual foundation. A truthful statement is also misleading if presented in a way that creates a substantial likelihood that a reasonable person would believe the lawyer's communication requires that person to take further action when, in fact, no action is required.

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

[4] It is professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit, or misrepresentation. Rule 8.4(c). *See also* Rule 8.4(e) for the prohibition against stating or implying an ability to influence improperly a government

agency or official or to achieve results by means that violate the Rules of Professional Conduct or other law.

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

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

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

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

RULE 7.2: ADVERTISING.

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

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

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

(2) pay the usual charges of a legal service plan or a not-for-profit or qualified lawyer referral service;

(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.

(c) 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.

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

Comment

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

Paying Others to Recommend a Lawyer

[2] Except as permitted under paragraphs (b)(1)-(b)(5), lawyers are not permitted to pay others for recommending the lawyer's services. A communication contains a

recommendation if it endorses or vouches for a lawyer's credentials, abilities, competence, character, or other professional qualities. Directory listings and group advertisements that list lawyers by practice area, without more, do not constitute impermissible "recommendations."

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

[4] Paragraph (b)(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.

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

[6] A lawyer may pay the usual charges of a legal service plan or a 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. Qualified referral services are 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. In order to constitute a qualified lawyer referral service in Minnesota, the referral service must show compliance with the American Bar Association's Model Supreme Court Rules Governing Lawyer Referral Services by obtaining certification to use the American Bar Association Lawyer Referral Logo and Tagline.

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

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

Communications about Fields of Practice

[9] Paragraph (c) of this Rule permits a lawyer to communicate that the lawyer does or does not practice in particular areas of law. A lawyer is generally permitted to state that the lawyer "concentrates in" or is a "specialist," practices a "specialty," or "specializes

in” particular fields based on the lawyer’s experience, specialized training or education, but such communications are subject to the “false and misleading” standard applied in Rule 7.1 to communications concerning a lawyer’s services.

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

[11] 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 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

[12] 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 live person-to-person contact when a significant motive for the lawyer's doing so is the lawyer's or law firm's pecuniary gain, unless the contact is with a:

(1) lawyer;

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

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

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

(1) the target of the solicitation has made known to the lawyer a desire not to be solicited by the lawyer; or

(2) the solicitation involves coercion, duress or harassment.

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

(e) Notwithstanding the prohibitions in this Rule, a lawyer may participate with a prepaid or group legal service plan operated by an organization not owned or directed by the lawyer that uses live person-to-person contact to 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.

Comment

[1] 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 not 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 electronic searches.

[2] "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 overreaching.

[3] The potential for overreaching inherent in live person-to-person contact justifies its prohibition, since lawyers have alternative means of conveying necessary information. In particular, communications can be mailed or transmitted by email or other electronic means that do not violate other laws. These forms of communications 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 persuasion that may overwhelm a person's judgment.

[4] The contents of live person-to-person contact can be disputed and may not be subject to 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.

[5] There is far less likelihood that a lawyer would engage in overreaching against a former client, or a person with whom the lawyer has a close personal, 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 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. Paragraph (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.

[6] 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.

[7] This Rule does not 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.

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

[9] Paragraph (e) of this Rule permits a lawyer to participate with an organization which uses personal contact to enroll 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, paragraph (e) would not permit a lawyer to create an organization controlled directly or indirectly by the lawyer and use the organization for the person-to-person solicitation of legal employment of the lawyer through memberships in the plan or otherwise. The communication permitted by these organizations must not be directed to a person known to need legal services in a particular matter, but must 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 assure that the plan sponsors are in compliance with Rules 7.1, 7.2 and 7.3(c).

INFORMATION ABOUT LEGAL SERVICES

RULE 7.1: COMMUNICATIONS CONCERNING A LAWYER'S SERVICES

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

Comment

[1] This rule governs all communications about a lawyer's services, including advertising ~~permitted by Rule 7.2~~. Whatever means are used to make known a lawyer's services, statements about them must be truthful.

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

[3] ~~An advertisement~~ A communication that truthfully reports a lawyer's achievements on behalf of clients or former clients may be misleading if presented so as to lead a reasonable person to form an unjustified expectation that the same results could be obtained for other clients in similar matters without reference to the specific factual and legal circumstances of each client's case. Similarly, an unsubstantiated claim about a lawyer's or law firm's services or fees, or an unsubstantiated comparison of the lawyer's or law firm's services or fees with ~~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.

[4] It is professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit, or misrepresentation. Rule 8.4(c). See also Rule 8.4(e) for the prohibition against stating or implying an ability to ~~influence~~ improperly influence a

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

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

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

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

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

RULE 7.2: ADVERTISING

(a) ~~Subject to~~ A lawyer may communicate information regarding the ~~requirements of~~ Rules 7.1 and 7.3, ~~a lawyer may advertise~~ lawyer's services through ~~written, recorded, or electronic communications, including public~~ any media.

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

(1) pay the reasonable costs of advertisements or communications permitted by this rule;

(2) pay the usual charges of a legal service plan or a not-for-profit or qualified lawyer referral service;

(3) pay for a law practice in accordance with Rule 1.17; ~~and~~

(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.

(c) 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.

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

Comment

~~[1] 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 of tradition. Nevertheless, advertising by lawyers entails the risk of practices that are misleading or overreaching.~~

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

~~[3] Questions of effectiveness and taste in advertising are matters of speculation and subjective judgment. Some jurisdictions have had extensive prohibitions against television 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.~~

~~4] Neither this rule nor Rule 7.3 prohibits communications authorized by law, such as notice to members of a class in class action litigation.~~

Paying Others to Recommend a Lawyer

[5] Except as permitted under paragraphs (b)(1)-(b)(4), 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."

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

[4] Paragraph (b)(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.

[5] ~~a~~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).

[6] 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. In order to constitute a qualified lawyer referral service in Minnesota, the referral service must show compliance with the American Bar Association's Model Supreme Court Rules Governing Lawyer Referral Services by obtaining certification to use the American Bar Association Lawyer Referral Logo and Tagline.

[7] A lawyer who accepts assignments or referrals from a legal service plan or referrals from a ~~not for profit~~ 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 or telephonic contacts that would violate Rule 7.3.~~

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

Communications about Fields of Practice

[9] Paragraph (c) of this rule permits a lawyer to communicate that the lawyer does or does not practice in particular areas of law. A lawyer is generally permitted to state that

the lawyer “concentrates in” or is a “specialist,” practices a “specialty,” or “specializes in” particular fields based on the lawyer’s experience, specialized training or education, but such communications are subject to the “false and misleading” standard applied in Rule 7.1 to communications concerning a lawyer’s services.

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

[11] 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 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

[12] 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) A lawyer shall not~~ “Solicitation” or “solicit” denotes a communication initiated by in- or on behalf of a lawyer or law firm that is directed to a specific person or 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 live telephone person-to-person contact solicit professional employment from anyone~~ when a significant motive for the lawyer’s doing so is the lawyer’s or law firm’s pecuniary gain, unless the ~~person contacted:~~ contact is with a:

_____ (1) is a lawyer; or

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

~~(b) A lawyer shall not solicit professional employment by written, recorded, or electronic communication or (3) person who routinely uses for business purposes the type of legal services offered by in-person or telephone contact the lawyer.~~

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

(1) the target of the solicitation has made known to the lawyer a desire not to be solicited by the lawyer; or

(2) the solicitation involves coercion, duress, or harassment.

~~(c) Every written, recorded, or electronic communication from a lawyer soliciting professional employment from anyone known to be in need of legal services in a particular matter shall clearly and conspicuously include the words “Advertising Material” on the outside envelope, if any, and within any written, recorded, or electronic communication, unless the recipient of the communication is a person specified in paragraphs (a)(1) or (a)(2).~~

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

(e) Notwithstanding the prohibitions in paragraph (a), this rule, a lawyer may participate with a prepaid or group legal service plan operated by an organization not owned or directed by the lawyer that uses in-live person or telephone-to-person contact to solicit

~~members~~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.

Comment

[1] ~~A solicitation is Paragraph (b) prohibits 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 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 typically does~~is 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.

[2] ~~There is a potential for abuse when a solicitation involves direct in person or live telephone contact by a lawyer with someone known to need legal services. These forms of contact subject~~[2] "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 to evaluate all available alternatives with reasoned judgment and appropriate self-interest in the face of the lawyer's presence and insistence upon being retained immediately an immediate response. The situation is fraught with the possibility of undue influence, intimidation, and ~~over-reaching~~overreaching.

[3] ~~This~~The potential for ~~abuse~~overreaching inherent in ~~direct in live person or live telephone solicitation 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 ~~direct in live person or telephone to person~~ persuasion that may overwhelm a person's judgment.

~~[4] The use of general advertising and written, recorded or electronic communications to transmit information from lawyer to the public, rather than direct in person or live telephone contact, will help to assure that the information flows cleanly 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 direct in person or live telephone contact can be disputed and may not be subject to third-party scrutiny.~~ [4] The contents of live person-to-person contact can be disputed and may not be subject to 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.

[5] There is far less likelihood that a lawyer would engage in ~~abusive practices~~ overreaching 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 ~~abuse when the person contacted is a lawyer. Consequently, the general prohibition in Rule 7.3(a) and the requirements of Rule 7.3(e) are not applicable in those situations. Also, paragraph (a) overreaching 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.~~ Paragraph (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 ~~it~~ their members or beneficiaries.

[6] ~~But even permitted forms of~~ A solicitation ~~can be abused. Thus, any solicitation which that~~ contains ~~information which is~~ false or misleading information within the meaning of Rule 7.1, ~~which that~~ involves coercion, duress or harassment within the meaning of Rule 7.3 ~~(b)(c)(2)~~, or ~~which 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 ~~(b)(1) is prohibited. Moreover, if after sending a letter or other communication as permitted by Rule 7.2 the lawyer receives no response, any further effort to communicate with the recipient of the communication may violate the provisions of Rule 7.3(b)(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.

[7] This ~~rule is~~Rule 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~~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.

~~[8]—The requirement in Rule 7.3(e) 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 a client known to be in need of legal services within the meaning of this rule.~~

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

[9] Paragraph (~~de~~) of this ~~rule~~Rule permits a lawyer to participate with an organization which uses personal contact to ~~solicit~~enroll 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, paragraph (~~de~~) 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-to-person 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~~must 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 assure that the plan sponsors are in compliance with Rules 7.1, 7.2 and 7.3(~~b~~). ~~See 8.4(a)~~ (c).

~~RULE 7.4: COMMUNICATION OF FIELDS OF PRACTICE AND CERTIFICATION~~

~~(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) In any communication subject to Rules 7.2, 7.3, or 7.5, a lawyer shall not state or imply that a lawyer is a specialist or certified as a specialist in a particular field of law except as follows:~~

~~(1) the communication shall clearly identify the name of the certifying organization, if any, in the communication; and~~

~~(2) if the attorney is not certified as a specialist or if the certifying organization is not accredited by the Minnesota Board of Legal Certification, the communication shall clearly state that the attorney is not certified by any organization accredited by the Board, and in any advertising subject to Rule 7.2, this statement shall appear in the same sentence that communicates the certification.~~

~~Comment~~

~~[1] Paragraph (a) of this rule permits a lawyer to indicate areas of practice in communications about the lawyer’s services. If a lawyer practices only in certain fields, or will not accept matters except in a specified field or fields, the lawyer is permitted to so indicate. A lawyer is generally permitted to state that the lawyer is a “specialist,” practices a “specialty,” or “specializes in” particular fields, but such communications are subject to the “false and misleading” standard applied in Rule 7.1 to communications concerning a lawyer’s services.~~

~~[2] Paragraph (b) recognizes the long established policy of the Patent and Trademark Office for the designation of lawyers practicing before the Office. Paragraph (c) recognizes that designation of Admiralty practice has a long historical tradition associated with maritime commerce and the federal courts.~~

~~[3] Paragraph (d) 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 that has been accredited by the Board of Legal Certification. 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 insure that a lawyer's recognition as a specialist is meaningful and reliable. In order to insure 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.~~

~~[4] Lawyers may also be certified as specialists by organizations that either have not yet been accredited to grant such certification or have been disapproved. In such instances, the consumer may be misled as to the significance of the lawyer's status as a certified specialist. The rule therefore requires that a lawyer who chooses to communicate recognition by such an organization also clearly state the absence or denial of the organization's authority to grant such certification. Because lawyer advertising through public media and written or recorded communications invites the greatest danger of misleading consumers, the absence or denial of the organization's authority to grant certification must be clearly stated in such advertising in the same sentence that communicates the certification.~~

~~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 or other professional designation 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.~~

Comment

~~[1] 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." A lawyer or law firm may also be designated by a distinctive website address or comparable professional designation. 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.~~

~~[2] With regard to paragraph (d), lawyers sharing office facilities, but who are not in fact associated with each other in a law firm, may not denominate themselves as, for example, "Smith and Jones," for that title suggests that they are practicing law together in a firm.~~