

FILED

May 13, 2022

**OFFICE OF
APPELLATE COURTS**

STATE OF MINNESOTA

IN SUPREME COURT

ADM10-8005

**ORDER REGARDING PROPOSED AMENDMENTS
TO THE MINNESOTA RULES OF PROFESSIONAL CONDUCT**

Currently before us are two petitions to amend the Minnesota Rules of Professional Conduct. The Lawyers Professional Responsibility Board and the Director of the Office of Lawyers Professional Responsibility filed a petition to amend Minn. R. Prof. Conduct 7.2–7.5. The Minnesota State Bar Association also filed a petition to amend these same rules. We opened a public comment period and held a public hearing on January 26, 2022.

Both petitions propose the same amendments to Minn. R. Prof. Conduct 7.2(a)–(b) and (d), 7.3, 7.4, and 7.5. They propose different amendments to Minn. R. Prof. Conduct 7.2(c).

After thorough consideration of the proposed amendments and the public comments, and for the reasons explained below, we grant the petitions in part and deny the petitions in part. Specifically, we grant both petitions with respect to the proposed amendments to Minn. R. Prof. Conduct 7.2(a)–(b) and (d), 7.3, 7.4, and 7.5. We deny both petitions with respect to Minn. R. Prof. Conduct 7.2(c). We also make changes to Minn. R. Prof. Conduct 7.2(c) that were not proposed in either petition. We also decline to adopt the proposed amendments to the comments to the rules that were submitted in the petitions.

Because we have adopted only some of the proposed changes to the rules and adopted other changes to Minn. R. Prof. Conduct 7.2(c) that were not proposed in the petitions, the proposed amendments to the comments do not reflect the changes that we have made to the rules. And even with respect to the rule changes that both petitions proposed and that we adopt, the petitions' proposed amendments to the comments differed from each other in some circumstances. If the petitioners believe that the comments to Rules 7.1 through 7.5 should be amended in light of the amendments that we now adopt, they may jointly submit such proposed comments by June 17, 2022. As in the past, any amendments to the comments to the rules will be included for convenience and will not reflect court approval or adoption.

IT IS HEREBY ORDERED THAT:

1. The Minnesota Rules of Professional Conduct are amended as shown below, effective as of July 1, 2022.
2. By June 17, 2022, the Minnesota State Bar Association, the Office of Lawyers Professional Responsibility, and the Lawyers Professional Responsibility Board may jointly file proposed amendments to the comments to Rules 7.1 to 7.5 with the Clerk of the Appellate Courts.

Dated: May 13, 2022

BY THE COURT:



Gildea, Lorie
May 13 2022 1:24 PM

Lorie S. Gildea
Chief Justice

STATE OF MINNESOTA

IN SUPREME COURT

ADM10-8005

MEMORANDUM

PER CURIAM.

Currently before us are two petitions to amend the Minnesota Rules of Professional Conduct. The Lawyers Professional Responsibility Board and the Director of the Office of Lawyers Professional Responsibility (collectively, LPRB) filed a petition to amend Minn. R. Prof. Conduct 7.2–7.5. The Minnesota State Bar Association (MSBA) also filed a petition to amend these same rules. We opened a public comment period and held a public hearing on January 26, 2022.

Rules 7.1–7.5 of the Minnesota Rules of Professional Conduct address information about legal services. Our rules on this topic have generally, but not completely, tracked the American Bar Association Model Rules of Professional Conduct (ABA Model Rules). In 2018, the ABA amended Model Rules 7.2–7.5, which was the catalyst for the petitions. There are two petitions because the petitioners disagree on one issue—the rule addressing if and when a lawyer may refer to themselves as a specialist or certified specialist (the Specialist Rule). Each petition recommends a different proposal to significantly modify the current Specialist Rule.¹ The remaining proposed changes are either part of the 2018

¹ The 2018 ABA amendments changed the location of this rule (from Rule 7.4(d) to Rule 7.2(c)), and made non-material changes to the language of the rule. All petitioners agree with the location change; they disagree about the wording of the rule.

amendments to the ABA Model Rules or are areas where petitioners recommend that Minnesota's rules come into alignment with the ABA Model Rules.

After careful consideration of the proposed amendments and the public comments, we adopt all of the changes jointly recommended by both petitions. Specifically, these are the proposed amendments to Minn. R. Prof. Conduct 7.2(a)–(b) and (d), 7.3, 7.4, and 7.5. We agree with petitioners that these changes are reasonable.

That leaves the Specialist Rule. We decline to make any of the changes to the Specialist Rule that were proposed by the petitioners, except to move it from Rule 7.4(d) to Rule 7.2(c). We do, however, adopt amendments to the Specialist Rule.

The current Specialist Rule is found in Minn. R. Prof. Conduct 7.4(d). It allows an attorney, in advertisements, solicitations, and firm names and letterhead, to “state or imply” that the attorney “is a specialist or certified as a specialist in a particular field of law,” but only if certain disclosures are made. Minn. R. Prof. Conduct 7.4(d). The communication has to “clearly identify the name of the certifying organization, if any,” and “the communication shall clearly state that the attorney is not certified by any organization accredited by” the Minnesota Board of Legal Certification (MBLC) “if the attorney is not certified as a specialist or if the certifying organization is not accredited by the” MBLC. *Id.*

Thus, the current Specialist Rule allows non-certified attorneys to refer to themselves as specialists, subject to disclosure that they are not certified by an agency accredited by the MBLC. It also allows certified attorneys to refer to themselves as

specialists or certified specialists if they disclose the name of the certifying entity and, if applicable, that they are not certified by an agency accredited by the MBLC.

The LPRB proposes that we delete the current Specialist Rule and replace it with the ABA Model Rule in a new location, resulting in a new Rule 7.2(c). The LPRB's new Rule 7.2(c) applies only to "certified specialists" and provides that "[a] lawyer shall not state or imply that [the] lawyer is certified as a specialist in a particular field of law, unless" that lawyer is "certified as a specialist" by a specific type of organization and discloses the name of that organization in the communication. The LPRB contends that making Minnesota's rule consistent with the ABA Model Rule will benefit lawyers with multijurisdictional practices while simultaneously protecting the public because lawyers will remain prohibited from having false or misleading advertising. The LPRB states that the proposed changes are needed to limit the risk of a challenge to the current rule based on a claim that it violates the First Amendment or antitrust laws.

We decline to adopt the LPRB's proposed change. The language that the LPRB urges us to adopt has been in the ABA Model Rules for a substantial period of time. We were previously asked to adopt this same language, but in 2005 we declined to do so and instead adopted the language in the current Specialist Rule. *See* Minnesota Rules of Professional Conduct, No. C8-84-1650, Order (Minn. filed June 22, 2005). The LPRB has not provided evidence to support the conclusion that this one Minnesota-specific advertising rule is actually thwarting or inhibiting multijurisdictional practices. It also has not convinced us that the current Specialist Rule is at substantial risk of being subject to a First Amendment or antitrust challenge. We have been presented with no persuasive

reason to deviate from the decision we made in 2005 and adopt the ABA Model Rule on this topic at this time.

The MSBA proposes that we delete the current Specialist Rule and replace it with a new rule that places more restrictions on lawyers' ability to refer to themselves as a specialist, resulting in a new Minn. R. Prof. Conduct 7.2(c). Under the MSBA's proposal, a lawyer would not be able to "state or imply that [the] lawyer is a specialist in a particular field of law, unless" they had "been certified as a specialist by" a specific type of organization and the name of that organization was identified in the communication. The MSBA contends that its proposed rule preserves the approach to specialist and specialty advertising that currently exists, which is to avoid misleading the public about claims of specialist and specialty.

We decline to adopt the MSBA's proposed change. The MSBA has offered no persuasive reason why we should stop allowing non-certified lawyers to refer to themselves as specialists, which is permitted under the current Specialist Rule.

We do agree with petitioners that the location of the Specialist Rule should be changed by moving it from Rule 7.4(d) to a new Rule 7.2(c). We adopt language in this new rule that essentially maintains the status quo by taking the language of Rule 7.4(d) and moving it, with minor modifications, to new Rule 7.2(c). We do this because the current Specialist Rule protects the public and recognizes the value of Minnesota's legal certification program. We chose to adopt this Minnesota-specific rule in 2005, and no one has offered a persuasive reason to change it. We therefore adopt a new Rule 7.2(c) that reads as follows:

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 in the same paragraph as the representation.

AMENDMENTS TO THE MINNESOTA RULES OF PROFESSIONAL CONDUCT

In the following amendments, deletions are indicated by a line drawn through the words and additions by a line drawn under the words.

RULE 7.2: ADVERTISING COMMUNICATIONS CONCERNING A LAWYER'S SERVICES: SPECIFIC RULES

(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 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 in the same paragraph as the representation.

(ed) 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.

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 whom 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.

(ab) A lawyer shall not solicit professional employment by in-person or 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.

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

(de) 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 memberships 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.

~~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 that Board, and in any advertising subject to Rule 7.2, this statement shall appear 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.~~