

Changes to Rule 7 of the Minnesota Rules of Professional Conduct

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On Oct. 1, 2005, a number of changes to the Minnesota Rules of Professional Conduct (MRPC) took effect. Rule 7 was among those changed. The rule deals with attorneys' communications about legal services, including solicitations and advertising. Minnesota attorneys should make sure they are familiar with the rule changes and modify their solicitation and advertising efforts accordingly.

Be true

Rule 7.1 deals generally with "communications concerning a lawyer's services," and prohibits false or misleading statements. Rule 7.1 was changed to drop specific language delineating certain types of misleading statements. These examples are included in the comment to the new version of Rule 7.1, however, and the change to the rule should not be interpreted as ratification of the specific types of statements set forth in the prior version. To the contrary, the specific examples listed previously in the rule, and now included in the comment, are still prohibited by the general language when such statements are either "false" or "misleading."

In other words, a lawyer violates the current version of Rule 7.1 if that lawyer creates an "unjustified expectation" about results or states or implies that the lawyer can "achieve results by means that violate the Rules of Professional Conduct or other law." Simply stated, if a lawyer's statement about his or her services does either of these things, that statement is misleading.

The former version of the rule also prohibited an attorney from comparing his services with the services of another lawyer "unless the comparison can be factually substantiated." The current version does not contain this specific prohibition; if the comparison is false or misleading, however, the statement would nonetheless violate the current version of the rule.

Advertising alterations

Rule 7.2 deals with attorney advertising, and the changes to this rule deal with specific conduct. The new version no longer requires that a copy of an advertisement be kept for two years after its last dissemination, nor that communications indicating that the fee will be contingent on the outcome also specify whether the client will be responsible for expenses irrespective of the outcome.

Rule 7.2 also no longer provides that every lawyer associated with a law firm will be subject to discipline for failure to make reasonable efforts to remedy communications that violate the rule. The new version of Rule

7.2 also adds a provision that permits an attorney to enter into reciprocal referral agreements with lawyers and/or nonlawyers — if not otherwise prohibited by the rules — when the agreement is not exclusive and the client is informed of the agreement.

Contact questions

Rule 7.3 deals with an attorney's direct contact with prospective clients.

The new version of the rule allows an attorney to make direct contact for purposes of soliciting business when contacting another lawyer or persons with whom the lawyer has a "close, personal relationship." The rule prohibits direct or indirect solicitation of any variety, of even otherwise permitted solicitees, when the solicitee has informed the attorney of a desire not to be solicited, or if the solicitation involves coercion, duress or harassment.

The new version of Rule 7.3 also requires that all written, recorded, or electronic communications soliciting professional employment include the specific words "Advertising Material" on the outside of the envelope (if any), and within the communication itself.

Finally, Rule 7.3 now specifically permits attorneys to participate in a prepaid or group legal services plan operated by an organization not owned or directed by the lawyer that uses in-person or telephone contact of persons not known to need legal services in a particular matter to solicit memberships or subscriptions to the plan.

Specialist stuff

Rule 7.4 addresses using the term "specialist" and its derivatives. The amended rule allows attorneys to state they are "specialists," or that they "specialize" in a particular area or areas of practice, even though they might not be certified as a specialist, provided that the representation as a "specialist" is not false or misleading.

The new version of Rule 7.4 goes on to provide some additional clarification regarding this change. The rule states that the attorney, when stating or implying a "specialization," must either list the certifying organization (and the certifying organization must be one that is accredited by the Minnesota Board of Continuing Legal Education), or the attorney must specifically state that he is not certified as a "specialist" in the particular area of practice (or explicitly note that the certification is not from an accredited organization).

Collectively, the changes to Rule 7 of the MRPC create specific and clear requirements for attorneys who advertise, solicit business or otherwise make communications about providing legal services — in other words, all practicing attorneys. Attorneys should familiarize themselves with the changes, make sure that their communications comply with the new rule, and review the language when making decisions regarding communications about their practices.