

**RE: Rule 1-400  
8/27-28/04 Commission Meeting  
Open Session Item III.E.**

-----Original Message-----

From: CommissionerJ2@aol.com [mailto:CommissionerJ2@aol.com]

Sent: Friday, July 30, 2004 12:55 PM

To: hbsondheim@earthlink.net; kabetzner@yahoo.com; lfoy@hrice.com; epgeorge@ix.netcom.com; slamport@ccnlaw.com; martinerz@ldbb.com; kmelchior@nossmann.com; pecklaw@prodigy.net; justice.ruvolo@jud.ca.gov; jsapiro@sapirolaw.com; mtuft@cwclaw.com; pwvapnek@townsend.com; avoogd@technip.com; Difuntorum, Randall

Cc: kevin\_e\_mohr@compuserve.com; kemohr@attbi.com; kevinm@wsulaw.edu

Subject: Rule 1-400: Agenda item IIIA

Good day to all,

I am having a great deal of difficulty in understanding why law firms would want to hide the ball. It should not matter where your offices are; how many there are or whether you have an 800 number. Can we please just know where any one of your offices are by you providing an address in your advertisement? surely an efficient staff member can forward to inquiry if it gets to the wrong office. I must be missing something here--please clarify.

Thanks,

J2

-----Original Message-----

From: Kevin Mohr [mailto:kemohr@comcast.net]

Sent: Sunday, July 25, 2004 8:34 PM

To: Edward P. George; JoElla L. Julien; Ignazio J. Ruvolo

Cc: Harry Sondheim; Difuntorum, Randall; McCurdy, Lauren; Kevin Mohr; Kevin Mohr; Kevin Mohr

Subject: RRC - 1-400 - Rule - Draft 3 - Comments

Greetings drafters:

I've attached the following for your review:

1. **Draft 3 of the Ad Rules**, using the Model Rules as a template. At the 7/9/04 meeting, the black letter rules were largely finalized and I have incorporated the changes agreed to at that meeting. I have also proposed a Discussion section for each rule, using the MR Comments as a template, and adding concepts that the RRC considered during the black letter discussion. I've also included a red-line version of each rule in the endnotes -- comparing the 7/24/04 draft to the last draft the RRC considered (5/28/04). The attached is in WP and PDF.

2. **Ad Standards**. A document suggesting with which rule the current 1-400 Standards should be associated if the RRC decides to keep the standards. The endnotes also refer to where a standard's concept has already been incorporated into one of the proposed rules. As I understand it, if there's time, the Ad Standard discussion will take place in conjunction with the 1-100 discussion. That attachment is also in WP and PDF.

3. **Comparison to Model Rules**. I've also attached a document that compares the attached 7/24/04 drafts of the rules and comments to the corresponding Model Rules. This should help the RRC members see how I've revised the MR comments. This document is in PDF only.

If you have any comments or suggestions before the Agenda mailing on 8/2/04, please let me know and I'll make the necessary changes. It's probably unlikely that we'll have time to get to the Standards at the meeting, but they will be there for consideration when we get there.

Thanks,

Kevin

1. --

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**Rule 7.1. Communications Concerning a ~~Lawyer's Services~~ Member's Services**

(a) For purposes of this chapter, "communication" means any message or offer made by or on behalf of a member concerning the availability for professional employment of a member or a member's law firm directed to any former, present, or prospective client, including but not limited to the following:

(1) Any use of firm name, trade name, fictitious name, or other professional designation of such member or law firm; or

(2) Any stationery, letterhead, business card, sign, brochure, domain name, Internet web page or web site, e-mail, or other written document sent or posted by electronic transmission, or other writing as defined in the Evidence Code describing such member, law firm, or lawyers; or

(3) Any advertisement (regardless of medium) of such member or law firm directed to the general public or any substantial portion thereof; or

(4) Any unsolicited correspondence, electronic transmission, or other writing as defined in the Evidence Code from a member or law firm directed to any person or entity.

(a)(b) ~~A lawyer~~ A member shall not make a false or misleading communication ~~about the lawyer or the lawyer's services.~~ as defined herein.

(c) A communication is false or misleading if it ~~contains~~:

(1) ~~Contains a material~~ any untrue statement; or

(2) ~~Contains any~~ misrepresentation of fact or law; or

(3) ~~Contains any matter, or presents or arranges any matter in a manner or format which is false, deceptive, or which confuses, deceives, or misleads the public; or~~

(4) ~~omits a to state any fact necessary to make the statement considered as a whole not materially misleading.~~ statements made, in the light of circumstances under which they are made, not misleading to the public.

(d) The Board of Governors of the State Bar shall formulate and adopt standards as to communications which will be presumed to violate this rule. The standards shall only be used as presumptions affecting the burden of proof in disciplinary proceedings involving alleged violations of these rules. "Presumption affecting the burden of proof" means that presumption defined in Evidence Code sections 605 and 606. Such standards formulated and adopted by the Board, as from time to time amended, shall be effective and binding on all members.

Comment Discussion

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

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services, statements about them must be truthful. Rule 7.2's requirement of truthfulness is also applicable to representations in such statements about the law.

[2] Rule 7.1 is also intended to prohibit 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 member's communication considered as a whole not materially misleading. A truthful statement is also misleading if there is a substantial likelihood that it will lead a reasonable person to formulate a specific conclusion about the lawyer member or the lawyer's member's services for which there is no reasonable factual foundation.

[3] An advertisement that truthfully reports a lawyer's member'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 comparison of the lawyer's member's services or fees with the services or fees of other lawyers members may be misleading if presented with such specificity as would lead a reasonable person to conclude that the comparison 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 a prospective client.

[4] The listing in paragraph (a) of examples of messages or offers that come within the meaning of "communication" is not intended to be exhaustive. For example, a member's intentionally misleading use of metatags to divert a prospective client to the web site of the member or the member's law firm would also be prohibited under this rule.

[45] See also Rule 8.4[1-120X(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.

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**Rule 7.2: Advertising**

- (a) Subject to the requirements of Rules 7.1 and 7.3, a lawyer member may advertise services through written, recorded or electronic communication, including public media.
- (b) A lawyer member shall not give anything of value to a person for recommending the lawyer's member's services except that a lawyer member may
- \_\_\_\_\_ (1) pay the reasonable costs of advertisements or communications permitted by this Rule;
- \_\_\_\_\_ (2) pay the usual charges of a legal services plan or a ~~not-for-profit or~~ qualified lawyer referral service. A qualified lawyer referral service is a lawyer referral service that has been approved by an appropriate regulatory authority; and established, sponsored and operated in accordance with the State Bar of California's minimum standards for a lawyer referral service in California;
- \_\_\_\_\_ (3) ~~pay for a law practice in accordance with Rule 1.17; rule 2-300; and~~
- (4) ~~refer clients to another lawyer or a nonlawyer professional~~ make referrals pursuant to an agreement not otherwise prohibited under these Rules that provides for the other person another to refer clients or customers or clients to the lawyer member, if
- \_\_\_\_\_ (i) the reciprocal referral agreement is not exclusive, and
- \_\_\_\_\_ (ii) the client is informed of the existence and nature of the agreement.
- (c) Any communication made pursuant to this rule shall include the name and office address of at least one lawyer member or law firm responsible for its content.

**Comments Discussion**

[1] To assist the public in obtaining legal services, lawyer members 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 advertising. 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, Members must be aware, however, that advertising by lawyersthem entails the risk of practices that are misleading or overreaching.

[2] This Rule 7.2 permits public dissemination of information concerning a lawyer's member's name or firm name, address and telephone number; the kinds of services the lawyer member will undertake; the basis on which the lawyer's member's fees are determined, including prices for specific services and payment and credit arrangements; a lawyer's member'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.

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~~[3] Questions of effectiveness and taste in advertising are matters of speculation and subjective judgment. Some jurisdictions have had extensive prohibitions against television advertising, against advertising going beyond specified facts about a lawyer, or against "undignified" advertising. Rule 7.2 permits advertising by television and radio. Television is now one of the most powerful media for getting information to the public, particularly persons of low and moderate income; prohibiting television advertising, therefore, would impede, and can enhance 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. Similarly, electronic media, such as the Internet, can be an important source of information about legal services, and lawful communication by electronic mail or through the web site of a member or the member's law firm is permitted by this Rule 7.2. But see Rule 7.3(a) for concerning the prohibition against the solicitation of a prospective client through a real-time electronic exchange that is not initiated by the prospective client.~~

[4] Neither this Rule 7.2 nor Rule 7.3 is intended to prohibits communications authorized by law, such as notice to members of a class in class action litigation.

*Paying Others to Recommend a Lawyer Member*

~~[5] Lawyers are not permitted to pay others for channeling professional work. Paragraph Notwithstanding rule 1-320(C)'s general prohibition on a member giving or promising anything of value to a representative of a communication medium in return for publicity of the member, subparagraph (b)(1), however, allows a lawyer member 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, banner ads, and group advertising. A lawyer member may also compensate employees, agents and vendors who are engaged to provide marketing or client-development services, such as publicists, public-relations personnel, business-development staff and website designers. See [Rule 5.3] for the duties of lawyers members and law firms with respect to the conduct of nonlawyers who prepare marketing materials for them.~~

[6] ~~A lawyer may~~ Subparagraph (b)(2) is intended to permit a member to pay the usual charges of a legal service plan or a ~~not-for-profit or qualified lawyer member referral service established, sponsored and operated in accordance with the State Bar of California's minimum standards for a lawyer referral service in California. See Business & Professions Code, section 6155, and rules and regulations pursuant thereto.~~ A legal service plan is a prepaid or group legal service plan or a similar delivery system that assists prospective clients to secure legal representation. A lawyer referral service, on the other hand, is any organization that holds itself out to the public as. Such referral services are understood by laypersons 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 prospective clients. 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 (requiring that organizations that are identified as lawyer referral services (i) permit the participation of all lawyers who are licensed and eligible to practice in the jurisdiction and who meet reasonable objective eligibility requirements as may be established by the referral service for the protection of prospective clients; (ii) require each participating lawyer to carry reasonably

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adequate malpractice insurance; (iii) act reasonably to assess client satisfaction and address client complaints; and (iv) do not refer prospective clients to lawyers who own, operate or are employed by the referral service.)

[7] ~~A lawyer~~ A member who accepts assignments or referrals from a legal service plan or referrals from a lawyer member referral service must act reasonably to assure that the activities of the plan or service are compatible with the lawyer's member's professional obligations. See Rule 5.3. Legal service plans and lawyer member referral services may communicate with prospective clients, 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 prospective clients to think that it was a lawyer member referral service sponsored by a state agency or bar association. [Nor could the lawyer member allow in-person, telephonic, or real-time contacts that would violate Rule 7.3.

[8] ~~A lawyer also may agree to refer clients to another lawyer or a nonlawyer professional~~ Subparagraph (b)(4) permits a member to make referrals to another, in return for the undertaking of that person to refer clients or customers to the lawyer member. Such reciprocal referral arrangements must not interfere with the lawyer's member'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~~ See Rule [1-310X(d)]. A member does not violate paragraph subparagraph (b)(4) of this Rule by agreeing to refer clients to the other lawyer or nonlawyer professional another, so long as the reciprocal referral agreement is not exclusive and the client is informed of the referral agreement. See also Rule 2-200(B). Conflicts of interest created by such arrangements made pursuant to subparagraph (b)(4) are governed by Rule 1.7[3-310]. 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 7.2 is not intended to restrict referrals or divisions of revenues or net income among lawyer's members within firms comprised of multiple entities.

Required information in advertisements

[9] Paragraph (c) also applies to a group of lawyers that engages in cooperative advertising. Any such communication made pursuant to Rule 7.2 shall include the name and office address of at least one member of the group responsible for its content.

**Rule 7.3~~+~~: Direct Contact with Prospective Clients**

- (a) A lawyer member shall not by in person ~~or, live~~ telephone or real-time electronic contact solicit professional employment from a prospective client when a significant motive for the lawyer's member's doing so is the lawyer's member's pecuniary gain, unless the communication is protected from abridgment by the Constitution of the United States or by the Constitution of the State of California or the person contacted:
- \_\_\_\_\_ (1) is a lawyer; or
- \_\_\_\_\_ (2) has a family, close personal, or prior professional relationship with the lawyer member.
- (b) A lawyer member shall not solicit professional employment from a prospective client by written, recorded or electronic communication or by in person, telephone or real-time electronic contact even when not otherwise prohibited by paragraph (a), if:
- \_\_\_\_\_ (1) the prospective client has made known to the lawyer member a desire not to be solicited by the lawyer member; or
- \_\_\_\_\_ (2) the solicitation is transmitted in any manner which involves intrusion, coercion, duress, compulsion, intimidation, threats, or vexatious or harassmentharassing conduct.
- (c) Every written or, recorded or electronic communication from a lawyer member soliciting professional employment from a prospective client known to be in need of legal services in a particular matter shall include the words "Advertising Material" or words of similar import on the outside envelope, if any, and at the beginning and ending of any recorded or electronic communication, unless the recipient of the communication is a person specified in paragraphs (a)(1) or (a)(2), or unless it is apparent from the context that the communication is an advertisement.
- (d) Notwithstanding the prohibitions in paragraph (a), a lawyer member may participate with a prepaid or group legal service plan operated by an organization not owned or directed by the lawyer member that uses in person or telephone contact to solicit memberships or subscriptions for the plan from persons who are not known to need legal services in a particular matter covered by the plan.

**Comment Discussion**

[1] There is a potential for abuse inherent in direct in person, ~~live~~ telephone or real-time electronic contact by a lawyer with a prospective client known to need legal services. These forms of contact between a lawyer and a prospective client subject the layperson to the private importuning of the trained advocate in a direct interpersonal encounter. The prospective client, who may already feel overwhelmed by the circumstances giving rise to the need for legal services, may find it difficult 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. The situation is fraught with the possibility of undue influence, intimidation, and over reaching.

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[2] This potential for abuse inherent in direct in person, ~~live~~ telephone or real-time electronic solicitation of prospective clients justifies its prohibition, particularly since lawyer member advertising and written ~~and recorded~~ communication permitted under Rule 7.2 offer alternative means of conveying necessary information to those who may be in need of legal services. ~~Advertising and written and recorded communications which may be mailed or autodialed make it possible for a prospective client to be informed about the need for legal services, and about the qualifications of available lawyers and law firms, without subjecting the prospective client to direct in person, telephone or real-time electronic persuasion that may overwhelm the client's judgment.~~

[3] The use of general advertising and written, ~~recorded~~ or electronic communications to transmit information from lawyer member to prospective client, rather than direct in person, ~~live~~ telephone or real-time electronic 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 member. 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, live telephone or real-time electronic conversations between a lawyer and a prospective client 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.~~

[4] There is far less likelihood that abuse will occur when the person contacted is a lawyer would engage in abusive practices against an individual who is, a former client, or one with whom the lawyer member has a prior close personal or family relationship, or in situations in which the lawyer member is not 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 paragraph (a) and the requirements of Rule 7.3 paragraph (c) are not applicable in those situations. ~~Also, paragraph (a) 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 its members or beneficiaries.~~

[5] ~~But e~~Even permitted forms of solicitation can be abused. Thus, any solicitation which contains information which is false or misleading within the meaning of Rule 7.1, which is transmitted in any manner which involves intrusion, coercion, duress, compulsion, intimidation, threats, or vexatious or harassing conduct within the meaning of Rule 7.3 subparagraph (b)(2), or which involves contact with a prospective client who has made known to the lawyer member a desire not to be solicited by the lawyer member within the meaning of Rule 7.3 subparagraph (b)(1) is prohibited. ~~Moreover, if after sending a letter or other communication to a client as permitted by Rule 7.2 the lawyer receives no response, any further effort to communicate with the prospective client may violate the provisions of this Rule~~

[6] Rule 7.3 is not intended to prohibit a lawyer member 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 member or lawyer's member's firm is willing to offer. ~~This form of communication is not directed to a prospective client. 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~~

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~~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.~~

[7] The requirement in ~~Rule 7.3(c) paragraph (c)~~ that certain communications be marked “Advertising Material” or with words of similar import does not apply to communications sent in ~~response to requests of potential clients or their spokespersons or sponsors. Paragraph (c) is also not intended to apply to~~ general announcements by members, 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. nor does it apply where it is apparent from the context that the communication is an advertisement.

[8] Paragraph (d) of this Rule permits a lawyer member to participate with an organization which uses personal contact to solicit members for its group or prepaid legal service plan, provided that the personal contact is not undertaken by any lawyer member 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 member or law firm that participates in the plan. For example, paragraph (d) would not permit a lawyer member to create an organization controlled directly or indirectly by the lawyer member and use the organization for the in person or telephone solicitation of legal employment of the lawyer member through memberships in the plan or otherwise. The communication permitted by these organizations also must not be directed to a person known to need legal services in a particular matter, but is to be designed to inform potential plan members generally of another means of affordable legal services. Lawyer Members 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~~ Rule [1-120X(a)].

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**Rule 7.4: Communication of Fields of Practice and Specialization**

- (a) A lawyer member may communicate the fact that ~~the lawyer he or she~~ does or does not practice in particular fields of law. A member may also communicate that his or her practice is limited to or concentrated in a particular field of law, if such communication does not imply an unwarranted expertise in the field so as to be false or misleading under Rule 7.1.
- (b) ~~A lawyer admitted to engage in patent practice~~ member registered to practice patent law before the United States Patent and Trademark Office may use the designation "Patent Attorney" or a substantially similar designation;
- (c) A lawyer member engaged in Admiralty practice may use the designation "Admiralty," "Proctor in Admiralty" or a substantially similar designation.
- (d) A lawyer member shall not state or imply that ~~a lawyer he or she~~ is a certified as a specialist in a particular field of law, unless:
- (1) the lawyer has been certified member holds a current certificate as a specialist by an organization that has been approved by an appropriate state authority or that has been issued by the Board of Legal Specialization, or any other entity accredited by the American Bar Association, and State Bar to designate specialists pursuant to standards adopted by the Board of Governors; and
- (2) the name of the certifying organization is clearly identified in the communication.

**Comment Discussion**

[1] Paragraph (a) of this Rule permits a lawyer member to indicate areas of practice in communications about the lawyer's member's services. If a lawyer member practices only in certain fields, or will not accept matters except in a specified field or fields, the lawyer member 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 All such communications are subject to the "false and misleading" standard applied in Rule 7.1 to communications concerning a lawyer's member's services.

[2] Paragraph (b) recognizes the long-established policy of the Patent and Trademark Office for the designation of lawyers practicing members registered to practice 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 member to state that the lawyer member is a certified as a specialist in a field of law if such certification is granted by an organization approved by an appropriate state authority or member holds a current specialist certificate issued by the Board of Legal Specialization or any other entity accredited by the State Bar. American Bar Association or another organization, such as a state bar association, that has been approved by the state authority 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 insure that a lawyer's recognition as a specialist is meaningful and reliable. In order to insure that consumers can obtain

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~~access to useful information about an organization granting certification, the~~ The name of the certifying organization must be included in any communication regarding the certification to insure that consumers can obtain access to useful information about the certifying organization.

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**Rule 7.5: Firm Names and Letterheads**

- (a) A lawyer member 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 member 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 member 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 member is not actively and regularly practicing with the firm.
- (d) ~~Lawyers~~ A member may state or imply that they practice in a partnership or other organization only when that is the fact. the member has a relationship to any other lawyer or a law firm as a partner or associate, or officer or shareholder pursuant to Business and Professions Code sections 6160-6172 only when such relationship in fact exists.

**Comment Discussion**

[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, by a distinctive website address, 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 Use of such names in law practice is acceptable so long as it is not misleading in violation of Rule 7.1. 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~~ It is misleading to use the name of a lawyer not associated with the firm or a predecessor of the firm, or the name of a nonlawyer.

[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. A member may state or imply that the member or member's law firm is "of counsel" to another lawyer or a law firm only if the former has a relationship with the latter (other than as a partner or associate, or officer or shareholder pursuant to Business and professions Code sections 6160-6172) which is close, personal, continuous, and regular.

**Rule 7.6. Political Contributions to Obtain Government Legal Engagements or Appointments by Judges**

A lawyer or law firm shall not accept a government legal engagement or an appointment by a judge if the lawyer or law firm makes a political contribution or solicits political contributions for the purpose of obtaining or being considered for that type of legal engagement or appointment.

**Comment**

[1]—~~Lawyers have a right to participate fully in the political process, which includes making and soliciting political contributions to candidates for judicial and other public office. Nevertheless, when lawyers make or solicit political contributions in order to obtain an engagement for legal work awarded by a government agency, or to obtain appointment by a judge, the public may legitimately question whether the lawyers engaged to perform the work are selected on the basis of competence and merit. In such a circumstance, the integrity of the profession is undermined.~~

[2]—~~The term "political contribution" denotes any gift, subscription, loan, advance or deposit of anything of value made directly or indirectly to a candidate, incumbent, political party or campaign committee to influence or provide financial support for election to or retention in judicial or other government office. Political contributions in initiative and referendum elections are not included. For purposes of this Rule, the term "political contribution" does not include uncompensated services.~~

[3]—~~Subject to the exceptions below, (i) the term "government legal engagement" denotes any engagement to provide legal services that a public official has the direct or indirect power to award; and (ii) the term "appointment by a judge" denotes an appointment to a position such as referee, commissioner, special master, receiver, guardian or other similar position that is made by a judge. Those terms do not, however, include (a) substantially uncompensated services; (b) engagements or appointments made on the basis of experience, expertise, professional qualifications and cost following a request for proposal or other process that is free from influence based upon political contributions; and (c) engagements or appointments made on a rotational basis from a list compiled without regard to political contributions.~~

[4]—~~The term "lawyer or law firm" includes a political action committee or other entity owned or controlled by a lawyer or law firm.~~

[5]—~~Political contributions are for the purpose of obtaining or being considered for a government legal engagement or appointment by a judge if, but for the desire to be considered for the legal engagement or appointment, the lawyer or law firm would not have made or solicited the contributions. The purpose may be determined by an examination of the circumstances in which the contributions occur. For example, one or more contributions that in the aggregate are substantial in relation to other contributions by lawyers or law firms, made for the benefit of an official in a position to influence award of a government legal engagement, and followed by an award of the legal engagement to the contributing or soliciting lawyer or the lawyer's firm would support an inference that the purpose of the contributions was to obtain the engagement, absent other factors that weigh against existence of the proscribed purpose. Those factors may include among others that the contribution or solicitation was made to further a political, social, or economic interest or because of an existing personal, family, or professional relationship with a candidate.~~

[6]—~~If a lawyer makes or solicits a political contribution under circumstances that constitute bribery or another crime, Rule 8.4(b) is implicated.~~

**CalBar – RRC**  
**Rule 1-400**  
**Communication, Advertising & Solicitation**  
**California Standards Related to Specific Model Rules**  
**For Discussion at August 27 & 28, 2004 Meeting**  
July 25, 2004

**Current Standards Related to Communication Rule (Rule 7.1):**

- (1) A “communication” which contains guarantees, warranties, or predictions regarding the result of the representation.<sup>1</sup>
- (2) A “communication” which contains testimonials about or endorsements of a member unless such communication also contains an express disclaimer such as “this testimonial or endorsement does not constitute a guarantee, warranty, or prediction regarding the outcome of your legal matter.”<sup>2</sup>
- (5) A “communication,” except professional announcements, seeking professional employment for pecuniary gain, which is transmitted by mail or equivalent means which does not bear the word “Advertisement,” “Newsletter” or words of similar import in 12 point print on the first page. If such communication, including firm brochures, newsletters, recent legal development advisories, and similar materials, is transmitted in an envelope, the envelope shall bear the word “Advertisement,” “Newsletter” or words of similar import on the outside thereof.<sup>3</sup>
- (14) A “communication” which states or implies “no fee without recovery” unless such communication also expressly discloses whether or not the client will be liable for costs.<sup>4</sup>
- (15) A “communication” which states or implies that a member is able to provide legal services in a language other than English unless the member can actually provide legal services in such language or the communication also states in the language of the communication (a) the employment title of the person who speaks such language and (b) that the person is not a member of the State Bar of California, if that is the case.<sup>5</sup>

**Current Standards Related to Advertising (Rule 7.2):**

- (10) A “communication” which implies that the member or law firm is participating in a lawyer referral service which has been certified by the State Bar of California or as having satisfied the Minimum Standards for Lawyer Referral Services in California, when that is not the case.<sup>6</sup>
- (12) A “communication,” except professional announcements, in the form of an advertisement primarily directed to seeking professional employment primarily for pecuniary gain transmitted to the general public or any substantial portion thereof by mail or equivalent means or by means of television, radio, newspaper, magazine or other form of commercial mass media which does not state the name of the member responsible for the communication. When the communication is made on behalf of a law firm, the communication shall state the name of at least one member responsible for it.<sup>7</sup>
- (13) A “communication” which contains a dramatization unless such communication contains a disclaimer which states “this is a dramatization” or words of similar import.<sup>8</sup>
- (16) An unsolicited “communication” transmitted to the general public or any substantial portion thereof primarily directed to seeking professional employment primarily for pecuniary gain which sets forth a specific fee or range of fees for a particular service where, in fact, the member charges a greater fee than advertised in such communication within a period of 90 days following dissemination of such communication, unless such communication expressly specifies a shorter period of time regarding the advertised fee. Where the communication is published in the classified or “yellow pages” section of telephone, business or legal directories or in other media not published more frequently than once a year, the member shall conform to the advertised fee for a period of one year from initial publication, unless such communication expressly specifies a shorter period of time regarding the advertised fee.<sup>9</sup>

**Current Standards Related to Direct Contact With Clients (Rule 7.3):**

- (3) A “communication” which is delivered to a potential client whom the member knows or should reasonably know is in such a physical, emotional, or mental state that he or she would not be expected to exercise reasonable judgment as to the retention of counsel.<sup>10</sup>
- (4) A “communication” which is transmitted at the scene of an accident or at or en route to a hospital, emergency care center, or other health care facility.<sup>11</sup>

**Current Standards Related to Rule 7.5 (“Firm Names & Letterheads”):**

- (6) A “communication” in the form of a firm name, trade name, fictitious name, or other professional designation which states or implies a relationship between any member in private practice and a government agency or instrumentality or a public or non-profit legal services organization.<sup>12</sup>
- (7) A “communication” in the form of a firm name, trade name, fictitious name, or other professional designation which states or implies that a member has a relationship to any other lawyer or a law firm as a partner or associate, or officer or shareholder pursuant to Business and Professions Code sections 6160-6172 unless such relationship in fact exists.<sup>13</sup>
- (8) A “communication” which states or implies that a member or law firm is “of counsel” to another lawyer or a law firm unless the former has a relationship with the latter (other than as a partner or associate, or officer or shareholder pursuant to Business and Professions Code sections 6160-6172) which is close, personal, continuous, and regular.<sup>14</sup>
- (9) A “communication” in the form of a firm name, trade name, fictitious name, or other professional designation used by a member or law firm in private practice which differs materially from any other such designation used by such member or law firm at the same time in the same community.<sup>15</sup>

1. Primarily related to rule 7.2 (Advertising), though also applicable to direct-targeted mailings (rule 7.3) and other solicitations.

No counterpart in Model Rules.

**KEM Recommendation:** If Standard (1) is retained, then it should be placed in rule 7.1 for broader application.

2. Primarily related to rule 7.2 (Advertising), though may also be applicable to direct-targeted mailings (rule 7.3).

No counterpart in Model Rules.

**KEM Recommendation:** If Standard (2) is retained, then it should be placed in rule 7.1 for broader application.

3. Related to both rule 7.2 and 7.3.

See proposed rule 7.3(c). Note that rule 7.3(c) is restricted to direct targeted mailings, while Standard (5) is also applicable to mass mailings.

**KEM Recommendation:** If Standard (5) is retained, then it should be placed in rule 7.1 for broader application.

4. Primarily related to rule 7.2 (Advertising), though also applicable to direct-targeted mailings (rule 7.3) and other solicitations.

No counterpart in Model Rules.

**KEM Recommendation:** If Standard (14) is retained, then it should be placed in rule 7.1 for broader application.

5. Primarily related to rule 7.2 (Advertising), though also applicable to direct-targeted mailings (rule 7.3) and other solicitations.

No counterpart in Model Rules.

**KEM Recommendation:** If Standard (15) is retained, then it should be placed in rule 7.1 for broader application.

6. Related to rule 7.2 (Advertising).

See proposed rule 7.2, Discussion paragraph [6].

**KEM Recommendation:** If Standard (10) is retained, then it should be placed in rule 7.2.

7. Related primarily to rule 7.2 (Advertising).

See proposed rule 7.2(c) & Discussion paragraph [9].

**KEM Recommendation:** If Standard (12) is retained, then it should be placed in rule 7.2. In light of the RRC's adoption of 7.2(c) and if Discussion paragraph [9] concerning cooperative advertising is adopted, should probably also revise the Standard along the following lines:

A "communication," except professional announcements, in the form of an advertisement primarily directed to seeking professional employment primarily for pecuniary gain transmitted to the general public or any substantial portion thereof by mail or equivalent means or by means of television, radio, newspaper, magazine or other form of commercial mass media which does not state the name and office address of the member responsible for the communication. When

the communication is made on behalf of a law firm or a group of lawyers engaged in cooperative advertising, the communication shall state the name of at least one member from the law firm or from the group of lawyers who is responsible for it.

8. Related to rule 7.2 (Advertising).  
No analogous provision in the Model Rules.  
**KEM Recommendation:** If Standard (13) is retained, then it should be placed in rule 7.2.
9. Related primarily to rule 7.2 (Advertising).  
No counterpart in the Model Rules.  
**KEM Recommendation:** If Standard (12) is retained, then it should be placed in rule 7.2.
10. Related to rule 7.3 (Direct Contact with Prospective Clients).  
*See* proposed rule 7.3(b)(2), which is based on current rule 1-400(D)(5).  
**KEM Recommendation:** If Standard (3) is retained, then it should be placed in rule 7.3.
11. See previous note.
12. Related to rule 7.5.  
See proposed rule 7.5(a), second sentence.  
**KEM Recommendation:** If Standard (6) is retained, then it should be placed in rule 7.5.
13. Related to rule 7.5.  
See proposed rule 7.5(d), which uses this language (vs. analogous Model Rule language)  
**KEM Recommendation:** If Standard (7) is retained, then it should be placed in rule 7.5.
14. Related to rule 7.5.  
See proposed rule 7.5, Discussion paragraph [2], second sentence.  
**KEM Recommendation:** If Standard (8) is retained, then it should be placed in rule 7.5.
15. Related to rule 7.5.  
See proposed rule 7.5(a), first sentence, which is the closest analog to Standard (9).  
**KEM Recommendation:** If Standard (9) is retained, then it should be placed in rule 7.5.

**CalBar – RRC**  
**Rule 1-400**  
**Communication, Advertising & Solicitation**  
**Model Rule Template – Draft 3**  
**For Discussion at August 27 & 28, 2004 Meeting**  
July 24, 2004

**Rule 7.1. Communications Concerning a Member's Services**

- (a) For purposes of this chapter, “communication” means any message or offer made by or on behalf of a member concerning the availability for professional employment of a member or a member’s law firm directed to any former, present, or prospective client, including but not limited to the following:
- (1) Any use of firm name, trade name, fictitious name, or other professional designation of such member or law firm; or
  - (2) Any stationery, letterhead, business card, sign, brochure, domain name, Internet web page or web site, e-mail, or other written document sent or posted by electronic transmission, or other writing as defined in the Evidence Code describing such member, law firm, or lawyers; or
  - (3) Any advertisement (regardless of medium) of such member or law firm directed to the general public or any substantial portion thereof; or
  - (4) Any unsolicited correspondence, electronic transmission, or other writing as defined in the Evidence Code from a member or law firm directed to any person or entity.
- (b) A member shall not make a false or misleading communication as defined herein.
- (c) A communication is false or misleading if it:
- (1) Contains any untrue statement; or
  - (2) Contains any misrepresentation of fact or law; or
  - (3) Contains any matter, or presents or arranges any matter in a manner or format which is false, deceptive, or which confuses, deceives, or misleads the public; or
  - (4) Omits to state any fact necessary to make the statements made, in the light of circumstances under which they are made, not misleading to the public.
- (d) The Board of Governors of the State Bar shall formulate and adopt standards as to communications which will be presumed to violate this rule. The standards shall only be used as presumptions affecting the burden of proof in disciplinary proceedings involving alleged violations of these rules. “Presumption affecting the burden of proof” means that presumption defined in Evidence Code sections 605 and 606. Such standards formulated and adopted by the Board, as from time to time amended, shall be effective and binding on all members.

(e) [DELETED provision re retention of communications].

## **Discussion**

[1] This Rule governs all communications about a member's services, including advertising permitted by Rule 7.2. Whatever means are used to make known a member's services, statements about them must be truthful. Rule 7.2's requirement of truthfulness is also applicable to representations in such statements about the law.

[2] Rule 7.1 is also intended to prohibit truthful statements that are misleading. A truthful statement is misleading if it omits a fact necessary to make the member's communication considered as a whole not materially misleading. A truthful statement is also misleading if there is a substantial likelihood that it will lead a reasonable person to formulate a specific conclusion about the member or the member's services for which there is no reasonable factual foundation.

[3] An advertisement that truthfully reports a member'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 comparison of the member's services or fees with the services or fees of other members may be misleading if presented with such specificity as would lead a reasonable person to conclude that the comparison 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 a prospective client.

[4] The listing in paragraph (a) of examples of messages or offers that come within the meaning of "communication" is not intended to be exhaustive. For example, a member's intentionally misleading use of metatags to divert a prospective client to the web site of the member or the member's law firm would also be prohibited under this rule.

[5] See also Rule [1-120X(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.

## **Rule 7.2. Advertising**

- (a) Subject to the requirements of Rules 7.1 and 7.3, a member may advertise services through written, recorded or electronic communication, including public media.
- (b) A member shall not give anything of value for recommending the member's services except that a member may
  - (1) pay the reasonable costs of advertisements or communications permitted by this Rule;
  - (2) pay the usual charges of a legal services plan or a qualified lawyer referral service. A qualified lawyer referral service is a lawyer referral service established, sponsored and operated in accordance with the State Bar of California's minimum standards for a lawyer referral service in California;
  - (3) pay for a law practice in accordance with rule 2-300; and
  - (4) make referrals pursuant to an agreement not otherwise prohibited under these Rules that provides for another to refer customers or clients to the member, if
    - (i) the reciprocal referral agreement is not exclusive, and
    - (ii) the client is informed of the existence and nature of the agreement.
- (c) Any communication made pursuant to this rule shall include the name and office address of at least one member or law firm responsible for its content.

## **Discussion**

[1] To assist the public in obtaining legal services, members should be allowed to make known their services not only through reputation but also through advertising. The public's need to know about legal services is particularly acute in the case of persons of moderate means who have not made extensive use of legal services. Members must be aware, however, that advertising by them entails the risk of practices that are misleading or overreaching.

[2] Rule 7.2 permits public dissemination of information concerning a member's name or firm name, address and telephone number; the kinds of services the member will undertake; the basis on which the member's fees are determined, including prices for specific services and payment and credit arrangements; a member'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] Rule 7.2 permits advertising by television and radio. Television is now one of the most powerful media for getting information to the public, particularly persons of low and moderate income, and can enhance the flow of information about legal services to many sectors of the public. Similarly, electronic media, such as the Internet, can be an important source of information about legal services, and lawful communication by electronic mail or through the web site of a member or the member's law firm is permitted by Rule 7.2. *But see* Rule 7.3(a) concerning the prohibition against solicitation of a prospective client through a real-time electronic exchange that is not initiated by the prospective client.

[4] Neither Rule 7.2 nor Rule 7.3 is intended to prohibit communications authorized by law, such as notice to members of a class in class action litigation.

*Paying Others to Recommend a Member*

[5] Notwithstanding rule 1-320(C)'s general prohibition on a member giving or promising anything of value to a representative of a communication medium in return for publicity of the member, subparagraph (b)(1), allows a member 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, banner ads, and group advertising. A member may also compensate employees, agents and vendors who are engaged to provide marketing or client-development services, such as publicists, public-relations personnel, business-development staff and website designers. *See* [Rule 5.3] for the duties of members and law firms with respect to the conduct of nonlawyers who prepare marketing materials for them.

[6] Subparagraph (b)(2) is intended to permit a member to pay the usual charges of a legal service plan or a qualified member referral service established, sponsored and operated in accordance with the State Bar of California's minimum standards for a lawyer referral service in California. *See* Business & Professions Code, section 6155, and rules and regulations pursuant thereto.

[7] A member who accepts assignments or referrals from a legal service plan or referrals from a member referral service must act reasonably to assure that the activities of the plan or service are compatible with the member's professional obligations. *See* Rule 5.3. Legal service plans and member referral services may communicate with prospective clients, 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 prospective clients to think that it was a member referral service sponsored by a state agency or bar association. [Nor could the member allow in-person, telephonic, or real-time contacts that would violate Rule 7.3.]

[8] Subparagraph (b)(4) permits a member to make referrals to another, in return for the undertaking of that person to refer clients or customers to the member. Such reciprocal referral arrangements must not interfere with the member's professional judgment as to making referrals or as to providing substantive legal services. *See* Rule [1-310X(d)]. A member does not violate subparagraph (b)(4) of this Rule by agreeing to refer clients to another, so long as the reciprocal referral agreement is not exclusive and the client is informed of the referral agreement. *See also* Rule 2-200(B). Conflicts of interest created by arrangements made pursuant to subparagraph (b)(4) are governed by Rule [3-310]. Reciprocal referral agreements should not be of indefinite duration and should be reviewed periodically to determine whether they comply with these Rules. Rule 7.2 is not intended to restrict referrals or divisions of revenues or net income among members within firms comprised of multiple entities.

*Required information in advertisements*

[9] Paragraph (c) also applies to a group of lawyers that engages in cooperative advertising. Any such communication made pursuant to Rule 7.2 shall include the name and office address of at least one member of the group responsible for its content.



### **Rule 7.3. Direct Contact with Prospective Clients**

- (a) A member shall not by in person, telephone or real-time electronic contact solicit professional employment from a prospective client when a significant motive for the member's doing so is the member's pecuniary gain, unless the communication is protected from abridgment by the Constitution of the United States or by the Constitution of the State of California or the person contacted:
  - (1) is a lawyer; or
  - (2) has a family, close personal, or prior professional relationship with the member.
- (b) A member shall not solicit professional employment from a prospective client by written, recorded or electronic communication or by in person, telephone or real-time electronic contact even when not otherwise prohibited by paragraph (a), if:
  - (1) the prospective client has made known to the member a desire not to be solicited by the member; or
  - (2) the solicitation is transmitted in any manner which involves intrusion, coercion, duress, compulsion, intimidation, threats, or vexatious or harassing conduct.
- (c) Every written or, recorded or electronic communication from a member soliciting professional employment from a prospective client known to be in need of legal services in a particular matter shall include the words "Advertising Material" or words of similar import on the outside envelope, if any, and at the beginning and ending of any recorded or electronic communication, unless the recipient of the communication is a person specified in paragraphs (a)(1) or (a)(2), or unless it is apparent from the context that the communication is an advertisement.
- (d) Notwithstanding the prohibitions in paragraph (a), a member may participate with a prepaid or group legal service plan operated by an organization not owned or directed by the member that uses in person or telephone contact to solicit memberships or subscriptions for the plan from persons who are not known to need legal services in a particular matter covered by the plan.

### **Discussion**

[1] There is a potential for abuse inherent in direct in person, telephone or real-time electronic contact by a lawyer with a prospective client known to need legal services. These forms of contact between a lawyer and a prospective client subject the layperson to the private importuning of the trained advocate in a direct interpersonal encounter. The prospective client, who may already feel overwhelmed by the circumstances giving rise to the need for legal services, may find it difficult 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. The situation is fraught with the possibility of undue influence, intimidation, and over reaching.

[2] This potential for abuse inherent in direct in person, telephone or real-time electronic solicitation of prospective clients justifies its prohibition, particularly since member advertising and written communication permitted under Rule 7.2 offer alternative means of conveying necessary information to those who may be in need of legal services.

[3] The use of general advertising and written or electronic communications to transmit information from member to prospective client, rather than direct in person, telephone or real-time electronic 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 member. 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.

[4] There is far less likelihood that abuse will occur when the person contacted is a lawyer, a former client, or one with whom the member has a prior close personal or family relationship, or in situations in which the member is not motivated by pecuniary gain. Consequently, the general prohibition in paragraph(a) and the requirements of paragraph(c) are not applicable in those situations.

[5] Even permitted forms of solicitation can be abused. Thus, any solicitation which contains information which is false or misleading within the meaning of Rule 7.1, which is transmitted in any manner which involves intrusion, coercion, duress, compulsion, intimidation, threats, or vexatious or harassing conduct within the meaning of subparagraph (b)(2), or which involves contact with a prospective client who has made known to the member a desire not to be solicited by the member within the meaning of subparagraph (b)(1) is prohibited.

[6] Rule 7.3 is not intended to prohibit a member 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 member or member's firm is willing to offer.

[7] The requirement in paragraph (c) that certain communications be marked "Advertising Material" or with words of similar import does not apply to communications sent in response to requests of potential clients or their spokespersons or sponsors. Paragraph (c) is also not intended to apply to general announcements by members, including changes in personnel or office location, nor does it apply where it is apparent from the context that the communication is an advertisement.

[8] Paragraph (d) of this Rule permits a member to participate with an organization which uses personal contact to solicit members for its group or prepaid legal service plan, provided that the personal contact is not undertaken by any member 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 member or law firm that participates in the plan. For example, paragraph (d) would not permit a member to create an organization controlled directly or indirectly by the member and use the organization for the in person or telephone solicitation of legal employment of the member through memberships in the plan or otherwise. The communication permitted by these organizations also must not be directed to a person known to need legal services in a particular matter, but is to be designed to inform potential plan members generally of another means of affordable legal services. Members 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 Rule [1-120X(A)].

#### **Rule 7.4. Communication of Fields of Practice and Specialization**

- (a) A member may communicate the fact that he or she does or does not practice in particular fields of law. A lawyer may also communicate that his or her practice is limited to or concentrated in a particular field of law, if such communication does not imply an unwarranted expertise in the field so as to be false or misleading under Rule 7.1.
- (b) A member registered to practice patent law before the United States Patent and Trademark Office may use the designation "Patent Attorney" or a substantially similar designation;
- (c) A member engaged in Admiralty practice may use the designation "Admiralty," "Proctor in Admiralty" or a substantially similar designation.
- (d) A member shall not state or imply that he or she is a certified specialist in a particular field of law, unless:
  - (1) the member holds a current certificate as a specialist issued by the Board of Legal Specialization, or any other entity accredited by the State Bar to designate specialists pursuant to standards adopted by the Board of Governors; and
  - (2) the name of the certifying organization is clearly identified in the communication.

#### **Discussion**

[1] Paragraph (a) permits a member to indicate areas of practice in communications about the member's services. If a member practices only in certain fields, or will not accept matters except in a specified field or fields, the member is permitted to so indicate. All such communications are subject to the "false and misleading" standard applied in Rule 7.1 to communications concerning a member's services.

[2] Paragraph (b) recognizes the long-established policy of the Patent and Trademark Office for the designation of members registered to practice 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 member to state that the member is a certified specialist in a field of law if member holds a current specialist certificate issued by the Board of Legal Specialization or any other entity accredited by the State Bar. The name of the certifying organization must be included in any communication regarding the certification to insure that consumers can obtain access to useful information about the certifying organization.

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

- (a) A member shall not use a firm name, letterhead or other professional designation that violates Rule 7.1. A trade name may be used by a member 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 member 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 member is not actively and regularly practicing with the firm.
- (d) A member may state or imply that the member has a relationship to any other lawyer or a law firm as a partner or associate, or officer or shareholder pursuant to Business and Professions Code sections 6160-6172 only when such relationship in fact exists.
- (e) **[DELETED** paragraph re “of counsel” that was based on Standard (8)]

### **Discussion**

[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, by a distinctive website address, or by a trade name such as the “ABC Legal Clinic.” Use of such names in law practice is acceptable so long as it is not misleading in violation of Rule 7.1. 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 is misleading to use the name of a lawyer not associated with the firm or a predecessor of the firm, or the name of a nonlawyer.

[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. A member may state or imply that the member or member’s law firm is “of counsel” to another lawyer or a law firm only if the former has a relationship with the latter (other than as a partner or associate, or officer or shareholder pursuant to Business and professions Code sections 6160-6172) which is close, personal, continuous, and regular.

~~**RULE 7.6. POLITICAL CONTRIBUTIONS TO OBTAIN GOVERNMENT LEGAL ENGAGEMENTS OR APPOINTMENTS BY JUDGES**~~

~~A lawyer or law firm shall not accept a government legal engagement or an appointment by a judge if the lawyer or law firm makes a political contribution or solicits political contributions for the purpose of obtaining or being considered for that type of legal engagement or appointment.~~

## ENDNOTES