

Special Committee to Study the Amendments to the ABA Model Rules on Advertising
Report to the State Bar Council and Request for Publication

TO: Executive Committee of the North Carolina State Bar Council

FROM: David Allen, Chair, Special Committee to Study the Amendments to the ABA Model Rules on Advertising

RE: Proposed Revisions to the North Carolina Rules of Professional Conduct on Advertising

DATE: July 1, 2020

After nearly two years of study, the Special Committee to Study the Amendments to the ABA Model Rules on Advertising has concluded its preliminary work. Members of the committee have diligently and thoughtfully combed over every word and idea contained in both the Model Rules on advertising and the North Carolina Rules on advertising. Our report, including our recommended amendments to the North Carolina Rules of Professional Conduct, is listed below.

I want to extend my thanks to the members of the committee (named below) for their dutiful and impressive work on this issue. Their focus and willingness to engage in meaningful debate on these important issues for North Carolina lawyers and the public we serve was nothing short of excellent. I am privileged to chair such a fine committee.

Our committee initially published an interim report to State Bar Councilors during the April 2020 State Bar Council Quarterly Meeting. This interim report contained both a summary of the committee's work and the recommended amendments to the Rules of Professional Conduct on advertising. At the April 2020 meeting, we requested all Councilors review the report and offer any feedback on the recommendations by June 1, 2020. On July 1, 2020, our committee met to consider the feedback received, to finalize our set of recommendations, and to approve this report.

It is now our recommendation that the amendments to the North Carolina Rules of Professional Conduct on advertising (Rules 7.1 through 7.5) contained herein be published for comment by the membership of the North Carolina State Bar.

David Allen, Chair
Special Committee to Study the Amendments to the ABA Model Rules on Advertising

Background and Creation of Committee

In August 2018, the American Bar Association amended the Model Rules of Professional Conduct on advertising (formerly Model Rules 7.1 through 7.5; hereinafter "the Model Rules"). The ABA's vote in August 2018 concluded a nearly two-year study of the advertising rules, including recommendations offered by the Association of Professional Responsibility Lawyers (APRL)

following its own nearly three-year study of the enforcement and interpretation of lawyer advertising rules nationwide. The ABA's study was primarily conducted by the ABA's Standing Committee on Ethics and Professional Responsibility.

The ABA's final report on Lawyer Advertising Rules for the 21st Century accompanying the adopted resolution amending the Model Rules described three primary concerns necessitating the review of and amendments to the Model Rules on advertising. First, the report noted the need for consistency among the different jurisdictions' lawyer advertising rules. The report explained that lawyers in the 21st century increasingly practiced in multiple jurisdictions, and how this "breathtaking variety" in advertising rules across the nation made compliance by lawyers and law firms with multi-jurisdictional practices unnecessarily complex. Second, the report recognized the substantial presence and impact that social media and the Internet has had on business generally, including the practice of law. Lastly, the report described recent trends in First Amendment and antitrust law that suggested burdensome and unnecessary restrictions on lawyer commercial speech may be unlawful. The report explained that, with these considerations in mind, the proposed amendments to the Model Rules hoped to eliminate compliance confusion and promote consistency in lawyer advertising rules, to provide lawyers and regulators across the nation with updates to the advertising rules that would protect clients from false and misleading advertising while freeing lawyers to use expanding technologies to communicate the availability of their services, and to increase consumer access to accurate information about legal services.

In April 2018, then-State Bar President John Silverstein appointed a special committee of the State Bar Council to review the ABA's proposed amendments to the Model Rules on advertising. State Bar Councilor David Allen, of Charlotte, chaired the committee. State Bar Councilor Mark Henriques, of Charlotte, served as Vice-Chair. President Silverstein appointed the following members of the State Bar Council to serve on the committee: Marci Armstrong, of Smithfield; Todd Brown, of Charlotte; Barbara Christy, of Greensboro; Dorothy Hairston Mitchell, of Durham; Stephen E. Robertson, of Greensboro; Judge Michael L. Robinson, of Winston-Salem; Warren Savage, of Cary; Everett Thompson, of Elizabeth City; Jay White, of Concord. President Silverstein appointed the following lawyers as voting-advisory members to the committee: Margaret Hunt, of Brevard; Ellen Murphy, Professor at the Wake Forest School of Law in Winston-Salem; and Deanna Brocker, of Raleigh. During the committee's work between April 2018 and the date of this report, the elected terms of State Bar Councilors Marci Armstrong and Judge Michael Robinson expired, but both were re-appointed to continue their service on the committee as voting-advisory members. The committee was staffed by Brian Oten, Ethics Counsel for the North Carolina State Bar. North Carolina State Bar Deputy Counsel Fern Gunn Simeon also participated in the committee meetings, along with a variety of guests from the State Bar Council, the State Bar staff, members of the North Carolina legal profession, and members of the public during the course of the committee's work.

Committee Approach and Work

The committee met a total of 14 times between April 2018 and July 2020. Most meetings were held in-person to permit a more productive and thorough conversation of the issues at hand.

Meetings held in conjunction with the State Bar's quarterly meetings ranged from one hour to two hours, while meetings held between quarterly meetings ranged from two to four hours. The meetings dates of the committee are listed as follows (location is listed in parentheses and indicates an in-person meeting):

- 4 June 2018 (by conference call)
- 26 July 2018 (Pinehurst)
- 27 September 2018 (Greensboro)
- 24 October 2018 (Raleigh)
- 16 January 2019 (Raleigh)
- 24 April 2019 (Raleigh)
- 9 May 2019 (Greensboro)
- 16 July 2019 (Blowing Rock)
- 1 October 2019 (Winston-Salem)
- 23 October 2019 (Raleigh)
- 21 January 2020 (Raleigh)
- 4 March 2020 (Winston-Salem)
- 9 April 2020 (by conference call)
- 1 July 2020 (by conference call)

The materials of each meeting, including the approved minutes thereof, are available for review upon request.

The committee began its work in June 2018 with the charge of reviewing each amendment made to the Model Rules on advertising, comparing the Model Rules to the corresponding provision in the North Carolina Rules of Professional Conduct (Rules 7.1 through 7.5), and determining whether to recommend adoption of the Model Rule, retention of the North Carolina Rule, or some other alternative. Above all, the committee pledged to thoughtfully consider each word in both the Model Rules and the North Carolina Rules on advertising in determining what best protected the public in the State of North Carolina. Similar to the stated purpose of the Model Rule amendments, the committee sought to accomplish the following goals and considerations through its work:

- To strengthen and prioritize the prohibition on false and misleading communications concerning a lawyer's services;
- To streamline the rules on advertising and eliminate unnecessary or unclear provisions;
- To increase consistency in the advertising rules across the different jurisdictions;
- To update the rules to reflect the current state of society and the profession, including the recognition of technology's presence in our personal and professional lives and the evolution of the consuming public;
- To enable lawyers to effectively and truthfully communicate the availability of legal services, including utilizing new technologies; and
- To enable the public to learn about the availability of legal services.

With these worthy goals and considerations in mind, the committee determined that, after discussion and when appropriate, it would favor recommending adoption of the Model Rule provisions in pursuit of consistency with the Model Rules and potentially other jurisdictions. However, the committee remained committed to the ultimate goal of protecting the public in North Carolina; to that end, the committee deviated from the Model Rules when necessary and appropriate.

Summary of Recommendations

The committee's last substantive working meeting was held on 4 March 2020 in Winston-Salem, at which point the committee had concluded its work of reviewing every amendment to the Model Rules on advertising and every provision in the North Carolina Rules on advertising. The committee's recommended amendments to the North Carolina Rules of Professional Conduct are contained in the attached document immediately following this summary. Additions are noted in **bold and underlined**. Deletions are ~~stricken~~.

A brief summary of the committee's recommended amendments to the North Carolina Rules of Professional Conduct on advertising (Rules 7.1 through 7.5) follows:

Rule 7.1

- Consolidate provisions on false and misleading communications by relocating material aspects of Rule 7.5 (Firm Names and Letterhead) to the comments of Rule 7.1.
- Relocate dramatization disclaimer requirement from text of Rule 7.1(b) to the comments of Rule 7.1.

Rule 7.2

- Generally replaces the term "advertising" with "communication concerning a lawyer's services."
- Permit a lawyer to pay the usual charges of an intermediary organization, as defined in new Rule 7.4 (see below).
 - Relocate the considerations of participation in a lawyer referral service to the new rule on intermediary organizations.
- Permit a lawyer to give nominal "thank you" gifts as an exception to the general prohibition on paying for recommendations.
- Relocate the material aspects of current Rule 7.4 (Communication of Fields of Practice and Specialization) to the text and comments of Rule 7.2.
 - Revise the rule text to reflect North Carolina's historic treatment of the terms "specialist" or "specialize" by specifically prohibiting use of those terms unless the lawyer is certified as a specialist in the field of practice.

Rule 7.3

- Move the definition of "solicitation" from the comments to the text of Rule 7.3.

- Retain the North Carolina definition of “solicitation,” which is different from the Model Rule definition.
- Permit lawyers to solicit persons who routinely use for business purposes the type of legal service offered by the lawyer as an exception to the general prohibition on in-person solicitation.
- Delete the labeling requirements for targeted communications.
- Streamline the rule permitting lawyers to participate in prepaid legal service plans.

Rule 7.4

- The Model Rule amendments relocated the bulk of Rule 7.4 to the text and comments of Rule 7.2. The committee recommends doing the same for NC Rule 7.4; as a result, the committee recommends deleting Rule 7.4.

Rule 7.5

- The Model Rule amendments relocated the bulk of Rule 7.5 to the comments of Rule 7.1. The committee recommends doing the same for NC Rule 7.5; as a result, the committee recommends deleting Rule 7.5.

New Rule 7.4

- New rule on “intermediary organizations” substitutes for prior provisions on lawyer referral services.
 - Definition of term recognizes the evolution of services offered to facilitate the creation of lawyer-client relationships.
- Permits lawyer participation in an intermediary organization if certain conditions are met; requires a lawyer to make reasonable efforts to ensure intermediary organization’s conduct complies with the lawyer’s professional obligations, including satisfaction of various conditions designed to protect the public and ensure clear, full, and truthful information to consumers.

Recommended Amendments to the North Carolina Rules of Professional Conduct on Advertising (Rules 7.1 through 7.5)

SECTION .0700 - INFORMATION ABOUT LEGAL SERVICES

27 NCAC 02 RULE 7.1 COMMUNICATIONS CONCERNING A LAWYER'S SERVICES

(a) A lawyer shall not make a false or misleading communication about the lawyer or the lawyer's services. A communication is false or misleading if it:

- (1) — contains a material misrepresentation of fact or law, or omits a fact necessary to make the statement considered as a whole not materially misleading; **Such communications include but are not limited to a statement that**
- (2) — is likely to create an unjustified expectation about results the lawyer can achieve; a **statement that** or states or implies that the lawyer can achieve results by means that violate the Rules of Professional Conduct or other law; or **a statement that**
- (3) — compares the lawyer's services with other lawyers' services, unless the comparison can be factually substantiated.

(b) ~~A communication by a lawyer that contains a dramatization depicting a fictional situation is misleading unless it complies with paragraph (a) above and contains a conspicuous written or oral statement, at the beginning and the end of the communication, explaining that the communication contains a dramatization and does not depict actual events or real persons.~~

Comment

False and Misleading Communications

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

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

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

[4] **It is professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit or misrepresentation. Rule 8.4(c).** *See also* Rule 8.4(e) for the prohibition against stating or implying an ability to ~~improperly~~ influence ~~improperly~~ a government agency or official or to achieve results by means that violate the Rules of Professional Conduct or other law.

Firm Names, Letterheads, and Professional Designations

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

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

[7] **Lawyers may not imply or hold themselves out as practicing together in one firm when they are not a firm, as defined in Rule 1.0(d), because to do so would be false and misleading. It is also misleading to use a designation such as “Smith and Associates” for a solo practice.**

[8] This rule does not prohibit the employment by a law firm of a lawyer who is licensed to practice in another jurisdiction, but not in North Carolina, provided the lawyer's practice is exclusively limited to areas that do not require a North Carolina law license. The lawyer's name may be included in the firm letterhead, provided all communications by such lawyer on behalf of the firm indicate the jurisdiction in which the lawyer is licensed as well as the fact that the lawyer is not licensed in North Carolina.

[9] If law offices are maintained in another jurisdiction, the law firm is an interstate law firm and must register with the North Carolina State Bar as required by 27 N.C. Admin. Code 1E.0200 et seq.

Dramatizations

[10] Dramatizations of fictional cases in video advertisements are potentially misleading. See 2010 FEO 9, RPC 164. A communication by a lawyer that contains a dramatization depicting a fictional situation is not misleading if it complies with paragraph (a) above and contains a conspicuous written or oral statement, at the beginning and the end of the communication, explaining that the communication contains a dramatization and does not depict actual events or real persons.

History Note: Authority G.S. 84-23;
Adopted July 24, 1997;
Amended Eff. October 2, 2014; March 1, 2003.

27 NCAC 02 RULE 7.2 ADVERTISING COMMUNICATIONS CONCERNING A LAWYER'S SERVICES: SPECIFIC RULES

(a) Subject to the requirements of Rules 7.1 and 7.3, a lawyer may advertise, communicate information regarding the lawyer's services through written, recorded or electronic communication, 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 ~~not-for-profit~~ lawyer referral service that complies with Rule 7.2(d), an intermediary organization that complies with Rule 7.4 or a prepaid or group legal services plan that complies with Rule 7.3(d)27 N.C. Admin. Code 1E.0301 et seq.; and
- (3) pay for a law practice in accordance with Rule 1.17; and
- (4) 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 that the lawyer specializes or is a specialist in a field of practice unless:

- (1) the lawyer is certified as a specialist in the field of practice by:**
 - (A) the North Carolina State Bar;**
 - (B) an organization that is accredited by the North Carolina State Bar; or**
 - (C) an organization that is accredited by the American Bar Association under procedures and criteria endorsed by the North Carolina State Bar; and**

- (2) the name of the certifying organization is clearly identified in the communication.**

(d) Any communication made pursuant to under this rule, other than that of a lawyer referral service as described in paragraph (d), shall must include the name and office address contact information of at least one lawyer or law firm responsible for its content.

(d) A lawyer may participate in a lawyer referral service subject to the following conditions:

- (1) the lawyer is professionally responsible for its operation including the use of a false, deceptive, or misleading name by the referral service;**
- (2) the referral service is not operated for a profit;**
- (3) the lawyer may pay to the lawyer referral service only a reasonable sum which represents a proportionate share of the referral service's administrative and advertising costs;**
- (4) the lawyer does not directly or indirectly receive anything of value other than legal fees earned from representation of clients referred by the service;**
- (5) employees of the referral service do not initiate contact with prospective clients and do not engage in live telephone or in person solicitation of clients;**
- (6) the referral service does not collect any sums from clients or potential clients for use of the service;**
- and**
- (7) all advertisements by the lawyer referral service shall:**
 - (A) state that a list of all participating lawyers will be mailed free of charge to members of the public upon request and state where such information may be obtained; and**
 - (B) explain the method by which the needs of the prospective client are matched with the qualifications of the recommended lawyer.**

Comment

[1] To assist the public in learning about and obtaining legal services, lawyers are permitted to make known their services not only through reputation, but also through organized information campaigns in the form of advertising. Advertising involves an active quest for clients, contrary to the tradition that a lawyer should not seek clientele. However, the public's need to know about legal services can be fulfilled in part through advertising. This need is particularly acute in the case of persons of moderate means who have not made extensive use of legal services. The interest in expanding public information about legal services ought to prevail over considerations of tradition. Nevertheless, advertising by lawyers may entail the risk of practices that are misleading or overreaching.

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

[3] Questions of effectiveness and taste in advertising are matters of speculation and subjective judgment. Television, the Internet, and other forms of electronic communication are now among the most powerful media for getting information to the public, particularly persons of low and moderate income; prohibiting television, Internet, and other forms of electronic advertising, therefore, would impede the flow of information about legal services to many sectors of the public. Limiting the information that may be advertised has a similar effect and assumes that the bar can accurately forecast the kind of information that the public would regard as relevant. But see Rule 7.1(b) for the disclaimer required in any advertisement that contains a dramatization and see Rule 7.3(a) for the prohibition against a solicitation through a real time electronic exchange initiated by the lawyer.

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

~~[5] "Electronic communication(s)," as used in Section 7 of the Rules of Professional Conduct, refers to the transfer of writing, signals, data, sounds, images, signs or intelligence via an electronic device or over any electronic medium. Examples of electronic communications include, but are not limited to, websites, email, text messages, social media messaging and image sharing. A lawyer who sends electronic communications to advertise or market the lawyer's professional services must comply with these Rules and with any state or federal restrictions on such communications. See, e.g., N.C. Gen. Stat. §75-104; Telephone Consumer Protection Act, 47 U.S.C. §227; and 47 CFR 64.~~

Paying Others to Recommend a Lawyer

~~[62] Except as permitted under paragraphs (b)(1)-(b)(34), lawyers are not permitted to pay others for recommending the lawyer's services or for channeling professional work in a manner that violates Rule 7.3. A communication contains a recommendation if it endorses or vouches for a lawyer's credentials, abilities, competence, character, or other professional qualities. **Directory listings and group advertisements that list lawyers by practice area, without more, do not constitute impermissible "recommendations."**~~

~~[3] Paragraph (b)(1), however, allows a lawyer to pay for advertising and communications permitted by this Rule, including the costs of print directory listings, on-line directory listings, newspaper ads, television and radio airtime, domain-name registrations, sponsorship fees, Internet-based advertisements, and group advertising. A lawyer may compensate employees, agents, and vendors who are engaged to provide marketing or client-development services, such as publicists, public-relations personnel, business-development staff, **television and radio station employees or spokespersons**, and website designers. Moreover, a lawyer may pay others for generating client leads, such as Internet based client leads, as long as the lead generator does not recommend the lawyer, any payment to the lead generator is consistent with Rule 1.5(e)(division of fees) and 5.4 (professional independence of the lawyer), and the lead generator's communications are consistent with Rule 7.1 (communications concerning a lawyer's service). To comply with Rule 7.1, a lawyer must not pay a lead generator if the lead generator states, implies, or creates an impression that it is recommending the lawyer, is making the referral without payment from the lawyer, or has analyzed a person's legal problems when determining which lawyer should receive the referral. See also Rule 5.3 (duties of lawyers and law firms with respect to the conduct of nonlawyers); Rule 8.4(a)(duty to avoid violating the Rules through the acts of another).~~

~~[4] Paragraph (b)(4) permits a lawyer to give nominal gifts as an expression of appreciation to a person for recommending the lawyer's services or referring a prospective client. The gift may not be more than a token item as might be given for holidays or other ordinary social hospitality. A gift is prohibited if offered or given in consideration of any promise, agreement, or understanding that such a gift would be forthcoming or that referrals would be made or encouraged in the future.~~

Paying Lead Generators

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

~~[7] A lawyer may pay the usual charges of a prepaid or group legal services plan or a not for profit lawyer referral service. A legal services plan is defined in Rule 7.3(d). Such a plan assists people who seek to secure legal representation. A lawyer referral service, on the other hand, is any organization that holds itself out to the public as a lawyer referral service. Such referral services are understood by the public to be consumer oriented organizations that provide unbiased referrals to lawyers with appropriate experience in the subject matter of the representation and afford other client protections, such as complaint procedures or malpractice insurance requirements. Consequently, this Rule only permits a lawyer to pay the usual charges of a not for profit lawyer referral service.~~

Referrals from Intermediary Organizations and Prepaid Legal Service Plans

[86] A lawyer who accepts assignments or referrals from a prepaid or group legal service plan or referrals from a lawyer referral service ~~an intermediary organization~~ must act reasonably to assure that the activities of the plan or service organization are compatible with the lawyer's professional obligations. *See Rule 5.3, Rule 7.3, and Rule 7.4.* ~~A prepaid legal service plan assists people who seek to secure legal representation. Intermediary organizations, including lawyer referral services, are understood by the public to be consumer-oriented organizations that provide unbiased referrals to lawyers with appropriate experience in the subject matter of the representation and afford other client protections, such as complaint procedures or malpractice insurance requirements.~~ Any lawyer who participates in a legal services plan or lawyer referral service is professionally responsible for the operation of the service in accordance with these rules regardless of the lawyer's knowledge, or lack of knowledge, of the activities of the service. ~~Prepaid~~ Legal service plans and lawyer referral services ~~intermediary organizations~~ may communicate with the public, but such communication must be in conformity with these Rules; ~~notably, such communication must not be false or misleading.~~ 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 referral service sponsored by a state agency or bar association. The term "referral" implies that some attempt is made to match the needs of the prospective client with the qualifications of the recommended lawyer. To avoid misrepresentation, paragraph (d)(7)(B) requires that every advertisement for the service must include an explanation of the method by which a prospective client is matched with the lawyer to whom he or she is referred. In addition, the lawyer may not allow in person, telephonic, or real time contacts that would violate Rule 7.3.

Specialty Certification

[7] ~~The use of the word "specialize" in any of its variant forms connotes to the public a particular expertise often subject to recognition by the state. Indeed, the North Carolina State Bar has instituted programs providing for official certification of specialists in certain areas of practice. 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 are expected to apply standards of experience, knowledge and proficiency to ensure that a lawyer's recognition as a specialist is meaningful and reliable. To avoid misrepresentation and deception, a lawyer may not communicate that the lawyer has been recognized or certified as a specialist in a particular field of law, except as provided by this rule. The rule requires that a representation of specialty may be made only if the certifying organization is the North Carolina State Bar, an organization accredited by the North Carolina State Bar, or an organization accredited by the American Bar Association under procedures approved by the North Carolina State Bar. To ensure that consumers can obtain access to useful information about an organization granting certification, the name of the certifying organization or agency must be included in any communication regarding the certification.~~

[8] ~~A lawyer may, however, describe his or her practice without using the term "specialize" in any manner which is truthful and not misleading. This rule specifically permits a lawyer to indicate areas of practice in communications about the lawyer's services. If a lawyer practices only in certain fields, or will not accept matters except in a specified field or fields, the lawyer is permitted to so indicate. The lawyer may, for instance, indicate a "concentration" or an "interest" or a "limitation."~~

Contact Information

[9] ~~This Rule requires that any communication about a lawyer or law firm's services include the name of, and contact information for, the lawyer or law firm. Contact information includes a website address, a telephone number, an email address, or a physical office location.~~

History Note: Authority G.S. 84-23;

Adopted by the Supreme Court: July 24, 1997;

Amendments Approved by the Supreme Court: March 1, 2003; October 2, 2014; September 28, 2017.

27 NCAC 02 RULE 7.3 DIRECT CONTACT WITH POTENTIAL CLIENTS SOLICITATION OF CLIENTS

(a) "Solicitation" or "solicit" denotes a communication initiated by the lawyer that is directed to a specific person and that offers to provide, or can reasonably be understood as offering to provide, legal services.

(ab) A lawyer shall not by in person, live telephone, or real time electronic contact solicit professional employment by live person-to-person contact when a significant motive for the lawyer's doing so is the lawyer's **or law firm's** pecuniary gain, unless the 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**
- (3) person who routinely uses for business purposes the type of legal services offered by the lawyer.**

(bc) A lawyer shall not solicit professional employment from a potential 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 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, compulsion, intimidation, or threats.**

(c) Targeted Communications. Unless the recipient of the communication is a person specified in paragraphs (a)(1) or (a)(2), 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 include the statement, in capital letters, "THIS IS AN ADVERTISEMENT FOR LEGAL SERVICES" (the advertising notice), which shall be conspicuous and subject to the following requirements:

- (1) Written Communications.** Written communications shall be mailed in an envelope. The advertising notice shall be printed on the front of the envelope, in a font that is as large as any other printing on the front or the back of the envelope. If more than one color or type of font is used on the front or the back of the envelope, the font used for the advertising notice shall match in color, type, and size the largest and widest of the fonts. The front of the envelope shall contain no printing other than the name of the lawyer or law firm and return address, the name and address of the recipient, and the advertising notice. The advertising notice shall also be printed at the beginning of the body of the enclosed written communication in a font as large as or larger than any other printing contained in the enclosed written communication. If more than one color or type of font is used on the enclosed written communication, then the font of the advertising notice shall match in color, type, and size the largest and widest of the fonts. Nothing on the envelope or the enclosed written communication shall be more conspicuous than the advertising notice.
- (2) Electronic Communications.** The advertising notice shall appear in the "in reference" or subject box of the address or header section of the communication. No other statement shall appear in this block. The advertising notice shall also appear, at the beginning and ending of the electronic communication, in a font as large as or larger than any other printing in the body of the communication or in any masthead on the communication. If more than one color or type of font is used in the electronic communication, then the font of the advertising notice shall match in color, type, and size the largest and widest of the fonts. Nothing in the electronic communication shall be more conspicuous than the advertising notice.
- (3) Recorded Communications.** The advertising notice shall be clearly articulated at the beginning and ending of the recorded communication.

(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 in compliance with 27 N.C. Admin. Code 1E.0301 et seq. that uses live person-to-person contact to enroll members or sell subscriptions for the plan to persons who are not known to need legal services in a particular matter covered by the plan, provide that, after reasonable investigation, the lawyer must have a good faith belief that the plan is being operated in compliance with 27 N.C. Admin. Code 1E.0301 et seq., and

the lawyer's participation in the plan does not otherwise violate the Rules of Professional Conduct, subject to the following:

- (1) Definition. A prepaid legal services plan or a group legal services plan ("a plan") is any arrangement by which a person, firm, or corporation, not otherwise authorized to engage in the practice of law, in exchange for any valuable consideration, offers to provide or arranges the provision of legal services that are paid for in advance of any immediate need for the specified legal service ("covered services"). In addition to covered services, a plan may provide specified legal services at fees that are less than what a non-member of the plan would normally pay. The North Carolina legal services offered by a plan must be provided by a licensed lawyer who is not an employee, director or owner of the plan. A prepaid legal services plan does not include the sale of an identified, limited legal service, such as drafting a will, for a fixed, one-time fee.
- (2) Conditions for Participation.
 - (A) The plan must be operated by an organization that is not owned or directed by the lawyer;
 - (B) The plan must be registered with the North Carolina State Bar and comply with all applicable rules regarding such plans;
 - (C) The lawyer must notify the State Bar in writing before participating in a plan and must notify the State Bar no later than 30 days after the lawyer discontinues participation in the plan;
 - (D) After reasonable investigation, the lawyer must have a good faith belief that the plan is being operated in compliance with the Revised Rules of Professional Conduct and other pertinent rules of the State Bar;
 - (E) All advertisements by the plan representing that it is registered with the State Bar shall also explain that registration does not constitute approval by the State Bar; and
 - (F) Notwithstanding the prohibitions in paragraph (a), the plan may use in person or telephone contact to solicit memberships or subscriptions provided:
 - (i) The solicited person is not known to need legal services in a particular matter covered by the plan; and
 - (ii) The contact does not involve coercion, duress, or harassment and the communication with the solicited person is not false, deceptive or misleading.

Comment

[1] A solicitation is a communication initiated by the lawyer that is directed to a specific person and that offers to provide, or can reasonably be understood as offering to provide, legal services. Paragraph (b) prohibits a lawyer from soliciting professional employment by live person-to-person contact when a significant motive for the lawyer's doing so is the lawyer's or the law firm's pecuniary gain. In contrast, a A lawyer's communication typically does not constitute is not a solicitation if it is directed to the general public, such as through a billboard, an Internet banner advertisement, a website or a television commercial, or if it is in response to a request for information or is automatically generated in response to Internet electronic searches.

[2] "Live person-to-person contact" means in-person, face-to-face, live telephone and other real-time visual or auditory person-to-person communications, where the person is subject to a direct personal encounter without time for reflection. Such person-to-person contact does not include chat rooms, text messages, or other written communications that recipients may easily disregard. There is a potential for abuse when a solicitation involves direct in-person, live telephone, or real time electronic contact by a lawyer with someone known to need legal services. A potential for overreaching exists when a lawyer, seeking pecuniary gain, solicits a person known to be in need of legal services by live person-to-person contact. These forms This form of contact subjects a person to the private importuning of the trained advocate in a direct interpersonal encounter. The person, who may already feel overwhelmed by the circumstances giving rise to the need for legal services, may find it difficult fully to evaluate all available alternatives with reasoned judgment and appropriate self-interest in the face of the lawyer's presence and insistence upon being retained immediately an immediate response. The situation is fraught with the possibility of undue influence, intimidation, and over-reaching.

[3] This potential for abuse overreaching inherent in direct in person, live telephone, or real time electronic solicitation live person-to-person contact justifies its prohibition, particularly because since lawyers have alternative means of conveying necessary information to those who may be in need of legal services. In particular,

communications can be mailed or transmitted by email or other electronic means that do not involve real time contact and do not violate other laws governing solicitations. These forms of communications and solicitations make it possible for the public to be informed about the need for legal services, and about the qualifications of available lawyers and law firms, without subjecting the public to direct in person, telephone or real time electronic live person-to-person persuasion that may overwhelm a person's judgment.

[4] The use of general advertising and written, recorded or electronic communications to transmit information from lawyer to the public, rather than direct in person, 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. 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 live person-to-person contact can be disputed and may not be subject to third-party scrutiny. Consequently, they are much more likely to approach (and occasionally cross) the dividing line between accurate representations and those that are false and misleading.

[5] There is far less likelihood that a lawyer would engage in abusive practices overreaching against a former client, or a person with whom the lawyer has a close personal, or family, business, or professional relationship, or in situations in which the lawyer is motivated by considerations other than the lawyer's pecuniary gain. Nor is there a serious potential for abuse when the person contacted is a lawyer or is known to routinely use the type of legal services involved for business purposes. Examples include persons who routinely hire outside counsel to represent the entity; entrepreneurs who regularly engage business, employment, or intellectual property lawyers; small business proprietors who routinely hire lawyers for lease or contract issues; and other people who routinely retain lawyers for business transactions or formations. Consequently, the general prohibition in Rule 7.3(a) and the requirements of Rule 7.3(e) are not applicable in those situations. Also, p 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.

[6] But even permitted forms of solicitation can be abused. Thus, any A solicitation which that contains information which is false or misleading information within the meaning of Rule 7.1, which involves coercion, duress, or harassment, compulsion, intimidation, or threats within the meaning of Rule 7.3(b)(2), or which that involves contact with someone who has made known to the lawyer a desire not to be solicited by the lawyer within the meaning of Rule 7.3(b)(1) is prohibited. Moreover, if after sending a letter or other communication as permitted by Rule 7.2 the lawyer receives no response, any further effort to communicate with the recipient of the communication may violate the provisions of Rule 7.3(b).

Contact to Establish Prepaid Legal Service Plan

[7] This Rule is does not intended to prohibit a lawyer from contacting representatives of organizations or groups that may be interested in establishing a group or prepaid legal plan for their members, insureds, beneficiaries, or other third parties for the purpose of informing such entities of the availability of and details concerning the plan or arrangement which the lawyer or lawyer's firm is willing to offer. This form of communication is not directed to people who are seeking legal services for themselves. Rather, it is usually addressed to an individual acting in a fiduciary capacity seeking a supplier of legal services for others who may, if they choose, become potential prospective clients of the lawyer. Under these circumstances, the activity which the lawyer undertakes in communicating with such representatives and the type of information transmitted to the individual are functionally similar to and serve the same purpose as advertising permitted under Rule 7.2.

[8] Paragraph (e) of this rule requires that all targeted mail solicitations of potential clients must be mailed in an envelope on which the statement, "This is an advertisement for legal services," appears in capital letters in a font at least as large as any other printing on the front or the back of the envelope. The statement must appear on the front of the envelope with no other distracting extraneous written statements other than the name and address of the recipient and the name and return address of the lawyer or firm. Postcards may not be used for targeted mail solicitations. No embarrassing personal information about the recipient may appear on the back of the envelope. The advertising notice must also appear in the "in reference" or subject box of an electronic communication (email) and at the beginning of

~~any paper or electronic communication in a font that is at least as large as the font used for any other printing in the paper or electronic communication. On any paper or electronic communication required by this rule to contain the advertising notice, the notice must be conspicuous and should not be obscured by other objects or printing or by manipulating fonts. For example, inclusion of a large photograph or graphic image on the communication may diminish the prominence of the advertising notice. Similarly, a font that is narrow or faint may render the advertising notice inconspicuous if the fonts used elsewhere in the communication are chubby or flamboyant. The font size requirement does not apply to a brochure enclosed with the written communication if the written communication contains the required notice. As explained in 2007 Formal Ethics Opinion 15, the font size requirement does not apply to an insignia or border used in connection with a law firm's name if the insignia or border is used consistently by the firm in official communications on behalf of the firm. Nevertheless, any such insignia or border cannot be so large that it detracts from the conspicuousness of the advertising notice. The requirement that certain communications be marked, "This is an advertisement for legal services," does not apply to communications sent in response to requests of potential clients or their spokespersons or sponsors. General announcements by lawyers, including changes in personnel or office location, do not constitute communications soliciting professional employment from a client known to be in need of legal services within the meaning of this Rule.~~

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

~~[9] See Rule 7.2, cmt. [5] for the definition of "electronic communication(s)" as used in paragraph (e)(2) of this rule. A lawyer may not send electronic or recorded communications if prohibited by law. See, e.g., N.C. Gen. Stat. §75-104; Telephone Consumer Protection Act 47 U.S.C. §227; and 47 CFR 64. "Real time electronic contact" as used in paragraph (a) of this rule is distinct from the types of electronic communication identified in Rule 7.2, cmt. [5]. Real-time electronic contact includes, for example, video telephony (e.g., FaceTime) during which a potential client cannot ignore or delay responding to a communication from a lawyer.~~

Contact to Enroll Members in Prepaid Legal Service Plan

~~[109] Paragraph (d) of this Rule permits a lawyer to participate with an organization which uses personal contact to solicit enroll members for its group or prepaid legal service plan, provided that the personal contact is not undertaken by any lawyer who would be a provider of legal services through the plan. The organization must not be owned by or directed (whether as manager or otherwise) by any lawyer or law firm that participates in the plan. For example, paragraph (d) would not permit a lawyer to create an organization controlled directly or indirectly by the lawyer and use the organization for the ~~in person or telephone~~ person-to-person solicitation of legal employment of the lawyer through memberships in the plan or otherwise. The communication permitted by these organizations also must not be directed to a person known to need legal services in a particular matter, but is to must be designed to inform potential plan members generally of another means of affordable legal services. Lawyers who participate in a legal service plan must reasonably assure that the plan sponsors are in compliance with Rule 7.3(d) 27 N.C. Admin. Code 1E.0301 et seq. as well as Rules 7.1, 7.2 and 7.3(b). See 8.4(a).~~

History Note: Authority G.S. 84-23;

Adopted by the Supreme Court: July 24, 1997;

Amendments Approved by the Supreme Court: March 1, 2003; October 6, 2004; November 16, 2006; August 23, 2007; August 25, 2011; October 2, 2014; September 28, 2017.

27 NCAC 02 RULE 7.4 COMMUNICATION OF FIELDS OF PRACTICE AND SPECIALIZATION

~~(a) A lawyer may communicate the fact that the lawyer does or does not practice in particular fields of law.~~

~~(b) A lawyer shall not state or imply that the lawyer is certified as a specialist in a field of practice unless:~~

- ~~(1) the certification was granted by the North Carolina State Bar;~~
- ~~(2) the certification was granted by an organization that is accredited by the North Carolina State Bar;~~
~~or~~
- ~~(3) the certification was granted by an organization that is accredited by the American Bar Association under procedures and criteria endorsed by the North Carolina State Bar; and~~
- ~~(4) the name of the certifying organization is clearly identified in the communication.~~

COMMENT

[1] The use of the word "specialize" in any of its variant forms connotes to the public a particular expertise often subject to recognition by the state. Indeed, the North Carolina State Bar has instituted programs providing for official certification of specialists in certain areas of practice. 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 are expected to apply standards of experience, knowledge and proficiency to insure that a lawyer's recognition as a specialist is meaningful and reliable. To avoid misrepresentation and deception, a lawyer may not communicate that the lawyer has been recognized or certified as a specialist in a particular field of law, except as provided by this rule. The rule requires that a representation of specialty may be made only if the certifying organization is the North Carolina State Bar, an organization accredited by the North Carolina State Bar, or an organization accredited by the American Bar Association under procedures approved by the North Carolina State Bar. To insure that consumers can obtain access to useful information about an organization granting certification, the name of the certifying organization or agency must be included in any communication regarding the certification.

[2] A lawyer may, however, describe his or her practice without using the term "specialize" in any manner which is truthful and not misleading. This rule specifically permits a lawyer to indicate areas of practice in communications about the lawyer's services. If a lawyer practices only in certain fields, or will not accept matters except in a specified field or fields, the lawyer is permitted to so indicate. The lawyer may, for instance, indicate a "concentration" or an "interest" or a "limitation."

[3] Recognition of expertise in patent matters is a matter of long established policy of the Patent and Trademark Office. 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.

History Note: Authority G.S. 84-23;
Eff. July 24, 1997;
Amended Eff. February 27, 2003.

27 NCAC 02 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 false or misleading in violation of Rule 7.1. Every trade name used by a law firm shall be registered with the North Carolina State Bar for a determination of whether the name is misleading.

(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) A law firm maintaining offices only in North Carolina may not list any person not licensed to practice law in North Carolina as a lawyer affiliated with the firm unless the listing properly identifies the jurisdiction in which the lawyer is licensed and states that the lawyer is not licensed in North Carolina.

(d) 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, whether or not the lawyer is precluded from practicing law.

(e) Lawyers may state or imply that they practice in a partnership or other professional organization only when that is the fact.

Comment

[1] A firm may be designated by the names of all or some of its members, by the names of deceased or retired members where there has been a continuing succession in the firm's identity, or by a trade name such as the "ABC Legal Clinic." A lawyer or law firm may also be designated by a distinctive website address or comparable professional designation. Use of trade names in law practice is acceptable so long as they are not misleading and are otherwise in conformance with the rules and regulations of the State Bar. If a private firm uses a trade name that includes a geographical name such as "Springfield Legal Clinic," an express disclaimer that it is not a public legal aid agency may be required to avoid a misleading implication. A firm name that includes the surname of a deceased or retired principal is, strictly speaking, a trade name. However, the use of such names, as well as designations such as "Law Offices of John Doe," "Smith and Associates," and "Jones Law Firm" are useful means of identification and are permissible without registration with the State Bar. However, it is misleading to use the surname of a lawyer not associated with the firm or a predecessor of the firm. It is also misleading to use a designation such as "Smith and Associates" for a solo

practice. The name of a retired principal may be used in the name of a law firm only if the principal has ceased the practice of law.

[2] This rule does not prohibit the employment by a law firm of a lawyer who is licensed to practice in another jurisdiction, but not in North Carolina, provided the lawyer's practice is limited to areas that do not require a North Carolina law license such as immigration law, federal tort claims, military law, and the like. The lawyer's name may be included in the firm letterhead, provided all communications by such lawyer on behalf of the firm indicate the jurisdiction in which the lawyer is licensed as well as the fact that the lawyer is not licensed in North Carolina. If law offices are maintained in another jurisdiction, the law firm is an interstate law firm and must register with the North Carolina State Bar as required by 27 NCAC 1E, Section .0200.

[3] Nothing in these rules shall be construed to confer the right to practice North Carolina law upon any lawyer not licensed to practice law in North Carolina. See, however, Rule 5.5.

[4] With regard to Paragraph (e), 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.

History Note: Authority G.S. 84-23;
Eff. July 24, 1997;
Amended Eff. September 22, 2016; March 1, 2003.

27 NCAC 02 RULE 7.4 INTERMEDIARY ORGANIZATIONS

(a) An intermediary organization is a lawyer referral service, lawyer advertising cooperative, lawyer matching service, online marketing platform, or other similar organization that engages in referring consumers of legal services to lawyers or facilitating the creation of lawyer-client relationships between consumers of legal services and lawyers willing to provide assistance. A tribunal or similar government agency that appoints or assigns lawyers to represent parties before the tribunal or government agency is not an intermediary organization under this Rule.

(b) Before and while participating in an intermediary organization, the lawyer shall make reasonable efforts to ensure that the intermediary organization's conduct complies with the professional obligations of the lawyer, including the following conditions:

- (1) The intermediary organization does not direct or regulate the lawyer's professional judgment in rendering legal services to the client;**
- (2) The intermediary organization, including its agents and employees, does not engage in improper solicitation pursuant to Rule 7.3;**
- (3) The intermediary organization makes the criteria for inclusion available to prospective clients, including any payment made or arranged by the lawyer(s) participating in the service and any fee charged to the client for use of the service, at the outset of the client's interaction with the intermediary organization;**
- (4) The function of the referral arrangement between lawyer and intermediary organization is fully disclosed to the client at the outset of the client's interaction with the lawyer;**
- (5) The intermediary organization does not require the lawyer to pay more than a reasonable sum representing a proportional share of the organization's administrative and advertising costs, including sums paid in accordance with Rule 5.4(a)(6); and**
- (6) The intermediary organization is not owned or directed by the lawyer, a law firm with which the lawyer is associated, or a lawyer with whom the lawyer is associated in a firm.**

(c) If a lawyer discovers an intermediary organization's noncompliance with Rule 7.4(b)(1) – (6), the lawyer shall either withdraw from participation or seek to correct the noncompliance. If the intermediary organization fails to correct the noncompliance, the lawyer must withdraw from participation.

Comment

[1] The term "referral" implies that some attempt is made to match the needs of the prospective client with the qualifications of the recommended lawyer.