



Association of Professional Responsibility Lawyers

Regulation of Lawyer Advertising Committee

Supplemental Report April 26, 2016

Introduction and Summary

The Committee's initial report, dated June 22, 2015, addressed concerns about overly restrictive and inconsistent state regulation of lawyer advertising, particularly in relation to today's diverse and innovative forms of electronic media advertising. The Committee recommended changes in the advertising rules to achieve greater rationality and uniformity in regulatory enforcement of lawyer advertising and marketing by proposing a new Rule 7.1 in place of ABA Model Rules 7.1, 7.2, 7.4 and 7.5 and by the use of non-disciplinary means to address most complaints about lawyer advertising. The Committee reserved for later consideration issues related to the regulation of direct solicitation of clients and communications transmitted in a manner that involves intrusion, coercion, duress and harassment (Model Rule 7.3). The Committee also deferred consideration of reciprocal referrals (Rule 7.2(b)(4)) and the effect of certain forms of lawyer advertising on the regulation of lawyer referral services.

The Committee has now considered the solicitation rules and has concluded that the legitimate regulatory objectives of preventing overreaching and coercion by lawyers who use in-person solicitation and targeted communications with the primary motivation of pecuniary gain can best be achieved by combining provisions of Model Rules 7.2 and 7.3 in a single rule. The Committee's proposed revisions of Model Rules 7.2 and 7.3 in the form of new Rule 7.2 is set forth in Attachment A.

The Committee's revised rule both defines solicitation and distinguishes solicitations that are prohibited from those that are permitted with appropriate protections.

Overview of the Legal and Constitutional Principles that Support Revising the Current Regulation of In-Person Solicitation, Targeted Communications, and Paying for Referrals

In developing proposed Rule 7.2 and this supplemental report, the Committee analyzed Supreme Court precedent, which identifies specific factors to consider when regulators seek to prohibit or restrict a lawyer's direct solicitation of a potential client.¹ The Committee concluded

¹ *The Fla. Bar v. Went For It, Inc.*, 515 U.S. 618 (1995) (holding that Florida's 30-day ban on direct mail solicitation in accident or disaster cases materially advances, in a manner narrowly tailored to achieve the objectives, the state's substantial interest in protecting the privacy of potential recipients and in preventing the erosion of public confidence in the legal system); *Shapero v. Ky. Bar Ass'n*, 486 U.S. 466 (1988) (holding that a state may not totally prohibit targeted direct mail to prospective clients known to face specific legal problems where the state's interest in preventing overreaching or coercion by an attorney using direct mail can be served by restrictions short of a total ban); *Ohralik v. Ohio State Bar Ass'n*, 436 U.S. 447 (1978) (upholding a total ban of in-person solicitation when the primary motivation behind the contact is the attorney's pecuniary gain); *In re Primus*, 436 U.S. 412 (1978) (holding that direct in-person solicitation is entitled to greater constitutional protection against state regulation when the attorney is motivated by the desire to promote political goals rather than pecuniary gain). See also *The Fla. Bar v. Herrick*, 571 So.2d 1303 (1990) (holding that a state can constitutionally regulate and restrict direct-mail solicitations by requiring personalized mail solicitation to be plainly marked as an "Advertisement."); "Commercial Speech Doctrine," THE FLORIDA BAR,

that most of the current restrictions on solicitation in the attorney advertising rules as well as the underlying public policy at play are based primarily upon lawyers approaching prospective clients in a face-to-face encounter without regard to today's digital world of electronic communications.

In fact, the ABA historically expressed concern about in-person solicitation assuming a lawyer may overwhelm a potential client and that, given the verbal nature of the exchange, it may be unclear what the lawyer said or what the prospective client reasonably inferred. However, that rationale does not apply to electronic communications, such as text messaging and posting on social media and in chat rooms, where there are verbatim logs or records of the communications that preserve the lawyer-prospective client exchange, and where the consumer can simply delete/ignore the exchange.

The Supreme Court has upheld restrictions on lawyer solicitation based upon the rationale that lawyers are better trained and skilled than other professionals in persuasion and oral advocacy.² For example, in *Ohralik v. Ohio State Bar Ass'n*,³ the Court upheld a blanket prohibition against in-person solicitation of legal business for pecuniary gain. The state's interest in preventing "those aspects of solicitation that induce fraud, undue influence, intimidation, overreaching and other forms of vexatious conduct" overrides the lawyer's interest in communication. Moreover, the Supreme Court noted that since in-person solicitation for pecuniary gain is basically impossible to regulate, a prophylactic ban is constitutional.

Once again, that rationale may be justified when applied to traditional face-to-face solicitation and live telephone conversations, but loses ground when applied to today's prerecorded telephonic messages and other electronic communications. Individuals may easily ignore a message that a lawyer sends via a chat room, text message or instant message without feeling awkward or impolite in doing so, as they might in a face-to-face encounter or a live telephone conversation. Modern telephone communication also allows a person who sees an unfamiliar number on his caller ID to easily ignore, block or not answer the incoming call. In fact, the tremendous growth of unsolicited business calls have created an environment in which people routinely ignore unfamiliar numbers and, at their convenience, screen their voicemail messages deciding whether to respond to the caller or delete the message. As a result, the risk of duress, coercion, over-persuasion or undue influence is far less with many forms of electronic communications than with live (face-to-face) communications and therefore the case for restricting solicitation by electronic communication is much weaker. Recall that the facts in *Ohralik* involved face-to-face contact between the lawyer and the prospective client.

As the Supreme Court noted in *Edenfield v. Fane*,⁴ striking down a ban on in-person solicitation by CPAs:

“[T]he constitutionality of a ban on personal solicitation will depend upon the identity of the parties and the precise circumstances of the solicitation. Later cases

[https://www.floridabar.org/TFB/TFBResources.nsf/Attachments/3BC6699A524B477B85257283005D415D/\\$FILE/Information%20on%20the%20Commercial%20Speech%20Doctrine.pdf?OpenElement](https://www.floridabar.org/TFB/TFBResources.nsf/Attachments/3BC6699A524B477B85257283005D415D/$FILE/Information%20on%20the%20Commercial%20Speech%20Doctrine.pdf?OpenElement)

² *Ohralik v. Ohio State Bar Ass'n*, 436 U.S. 447, 464-465 (1978)(finding a greater potential for overreaching when a lawyer, professionally trained in the art of persuasion, personally solicits an unsophisticated, injured or distressed person).

³ 436 U.S. 447, 454 (1978).

⁴ 507 U.S. 761 (1993).

have made this clear, explaining that *Ohralik's* holding was narrow and depended upon certain “unique features of in-person solicitation by lawyers” that were present in the circumstances of that case.

Ohralik was a challenge to the application of Ohio’s ban on attorney solicitation and held only that a State Bar ‘constitutionally may discipline a lawyer for soliciting clients in person, for pecuniary gain, under circumstances likely to pose dangers that the State has a right to prevent.’ While *Ohralik* discusses the generic hazards of personal solicitation, the opinion made clear that a preventative rule was justified only in situations ‘inherently conducive to overreaching and other forms of misconduct.’⁵

Therefore, when considering other means of solicitation, for example, through chat rooms, social media, text messaging, instant messaging, etc., regulation of those contacts is justified only if the solicitation occurs under circumstances that are “inherently conducive to overreaching or other forms of misconduct.”

The ABA Model Rules currently include a prohibition against what is referred to as “real-time electronic contact” as a form of “in-person” solicitation. See ABA MR 7.3(a). This Committee believes that the term “real-time electronic contact” as a moniker to describe “in person” solicitation ignores the required examination of the precise circumstances under which a solicitation occurs. Many forms of social media and electronic communication (i.e., texting, instant messaging, posting on social media) are more akin to a targeted written communication rather than a face-to-face communication because the person contacted has an opportunity to reflect or research before responding or not respond at all. In other words, “real-time electronic contacts” with a potential client are not face-to-face encounters but are more like targeted mailings, which are constitutionally protected. There is no need for discipline unless they are inherently conducive to overreaching or other forms of misconduct. The requirements under paragraphs (c) and (d) of the proposed rule in addition to the requirements of Rule 7.1 serve as adequate protection and an absolute ban is no longer warranted.

For instance, a chat room is a cyber construct. It is not a room and no one chats. It is a “place” on the Internet where people can visit and write whatever they want, just like a listserv or Facebook Messenger. Anyone can leave the chat room; or, they can “lurk” without posting. No one is “trapped” in an Internet “chat room” with an aggressive lawyer like the hospitalized accident victim in *Ohralik*. Everything posted in a chat room is in writing and there is a record of what is said. The point is not whether chat rooms may be described as “real time” communication, but rather that the contacts that occur in an Internet chat room simply are not “in person” communications. Thus, there is no justification for a prophylactic ban on lawyer solicitation in an Internet chat room or other “real-time” electronic forums.⁶ Those communications are subject to the general prohibition of false or misleading speech.

“Face time,” “Skype” and other forms of VOIP⁷ video conferencing, are just telephone conversations. The Committee’s proposed rule bans live telephone calls (with individuals other than those excepted in Rule 7.2(a)), and so it would also ban solicitation via “Face time” or

⁵ 507 U.S. at 774. (Citations omitted).

⁶ See Philadelphia Bar Ass’n Ethics Op. 2010-6; Florida Advisory Opn. 1-00-1 (Revised).

⁷ VOIP is “Voice over the Internet Protocol.”

“Skype” because the communication is just a live telephone call with the ability to show yourself to the other person (if he consents).

Though described by the ABA rules as “real-time electronic contacts,” if the means of solicitation is more akin to targeted letters or written communications, state regulators cannot impose a prophylactic ban. *Shapero v. Kentucky Bar Ass’n*⁸, held that the state may not prohibit a lawyer from sending truthful solicitation letters to persons identified as having legal problems. In *Shapero*, the Court focused on the method of communication and found targeted letters to be comparable to the print advertising used in *Zauderer*,⁹ which can easily be ignored or discarded. The same reasoning applies to social media, texting and other forms of electronic solicitation.

The Supreme Court upheld (in a 5 to 4 decision) a Florida Bar rule banning targeted direct mail solicitation to personal injury accident victims or their families for 30 days after an accident or disaster. *Florida Bar v. Went For It, Inc.*¹⁰ However, in reaching its holding the Court focused on the timing of the letters. The Court found that the timing and intrusive nature of the targeted letters was an invasion of privacy; and, when coupled with the negative public perception of the legal profession, the Florida rule imposing a 30 day “cooling off” period materially advanced a significant government interest. This decision, however, does not support a prophylactic ban on targeted letters, only a restriction as to their timing. Moreover, other states have not followed Florida’s rule.

Thus, having considered the indirect nature of electronic communication, the Committee recommends a rule that imposes a ban only on face-to-face and live telephone solicitations, but not “real time” electronic or video contacts with a potential client. Several state bar opinions have reached similar conclusions.¹¹

In addition to limiting prohibited solicitation to face-to-face and live telephone, the Committee proposes an expansion of the exceptions to the ban on direct in-person solicitation to include persons who are sophisticated users of legal services and persons who are contacted pursuant to a court-ordered class action notification. As in the case of persons who are lawyers or with whom the lawyer has a close personal or family relationship, there is far less likelihood of undue influence, intimidation and overreaching when the person contacted is a sophisticated user of legal services.¹² Proposed Comment [4] describes a sophisticated user of legal services as a person who has had significant dealings with the legal profession or who regularly retains legal services for business purposes. The exception under paragraph (b)(3) reflects existing case law. In each instance, the safeguards under paragraphs (c) and (d) as well as the requirements of Rule 7.1 serve as adequate protection and an absolute ban is no longer warranted in these situations.

⁸ 486 U.S. 466 (1988).

⁹ *Zauderer v. Office of Disciplinary Counsel*, 471 U.S. 626 (1985).

¹⁰ 515 U.S. 618 (1995).

¹¹ Philadelphia Bar Ass’n Ethics Op. 2010-6 concludes that Rule 7.3 does not apply to solicitation by e-mail, social media, chat room or other electronic means where it would not be socially awkward for potential client to ignore a lawyer’s overture as they can with targeted mailing; such contacts are not “real time” communications for purposes of the rule. North Carolina State Bar Op. 2011-08 advises that a lawyer’s use of chat room support service does not violate Rule 7.3 as it does not subject the website visitor to undue influence or intimidation; the visitor has the ability to ignore the live chat button or to indicate with a click that he or she does not wish to participate in a live chat session. Florida also concurs as evidenced by its complete reversal of its original opinion that banned chat room solicitation and its acknowledgement of the evolution of digital communications. Florida Advisory Opinion A-00-1 (Revised) (Approved by the Board Review Committee on Professional Ethics on October 15, 2015) notes, “. . . written communications via a chat room, albeit in real time, does not involve the same pressure or opportunity for overreaching” as face to face solicitation).

¹² Other state bar rules have recognized this long-established exception. See Va. Rule 7.3, cmt.[2] at <http://www.vsb.org/pro-guidelines/index.php/rules/information-about-legal-services/rule7-3/>

Proposed Rule 7.2

Proposed Rule 7.2 combines elements of current Model Rules 7.2 and 7.3 regarding solicitation of clients. Paragraph (a) provides a definition of "solicitation" that is derived from the first sentence in Comment [1] to Model Rule 7.3. The Committee believes it is important to define what constitutes a solicitation in the black letter of the rule rather than in a comment and that the definition apply to both direct in-person and targeted written contacts. The definition in paragraph (a) tracks Model Rule 7.3, Comment [1] except that it clarifies that a solicitation includes targeted communications initiated by "or on behalf of" a lawyer and limits solicitations to communications that offer to provide legal services "in a particular matter." The phrase "in a particular matter" is consistent with Model Rule 7.3(c) and paragraph (c) of this rule. The comments to the proposed rule make it clear that all in-person and targeted communications offering to provide legal services in regard to a particular matter must comply with Rule 7.1.

Paragraph (b) defines solicitations that are prohibited under the reasoning in *Ohralik v. Ohio State Bar Ass'n*.¹³ Prohibited solicitations under paragraph (b) include employees and other agents of the lawyer. For the reasons described above, the Committee believes that a total ban on in-person contacts to solicit professional employment when a significant motive is the lawyer's pecuniary gain is justified only in the case of direct face-to-face and live telephone contacts and not in the case of real time electronic contact. Chat rooms and other forms of real time electronic communication are less fraught with the possibility of intimidation and coercion and are more properly addressed under paragraphs (c) and (d) of the proposed rule.

The exceptions to the ban on direct in-person solicitation have been expanded to include persons who are sophisticated users of legal services and persons who are contacted pursuant to a court-ordered class action notification. Proposed Comment [4] describes a sophisticated user of legal services as a person who has had significant dealings with the legal profession or who regularly retains legal services for business purposes. The exception under paragraph (b)(3) reflects existing case law.

Paragraph (c) carries forward the requirements of Model Rule 7.3(c) with minor revisions. The phrase "on or behalf of" a lawyer had been added for greater clarity and is consistent with the definition of solicitation in paragraph (a)

Paragraph (d) provides a more straightforward and clear statement of the protections in Model Rule 7.3(b). These protections apply to all in-person and targeted communications permitted under the rule. The headings to each paragraph provide additional clarity.

As noted above, the Committee recommends stream-lining the regulations regarding "solicitation" currently in Model Rules 7.2 and 7.3, while maintaining the legitimate policy objectives of both rules, by including solicitation of potential clients both by direct in-person, face-to-face or telephone communication and through paying someone else something of value for referring prospects in a single rule. Proposed Rule 7.2 combines the solicitation provisions of Model Rule 7.3 with the provision in Model Rule 7.2(b) of refraining from giving someone something of value for referring clients because both provisions involve the solicitation of prospective clients. Paragraph (e) carries forward Model Rule 7.3(d) without substantive change.

Paragraph (f) is substantially the same as Model Rule 7.2(b), which prohibits "giving anything of value" to anyone for referring clients to a lawyer, other than to employees and lawyers

¹³ 436 U.S. 447 (1978).

who work in the same firm as the lawyer receiving the referral. Rule 7.2(f)(1) is changed to clarify that payments for online group directories/advertising platforms are just payments for advertising. Paying for referrals historically was a prohibited form of solicitation, allegedly because of the risk that a lawyer who pays someone for referrals would engage in unseemly “ambulance chasing” by engaging runners to lure potential clients. Thus, as Hazard, Hodes, & Jarvis, *Law of Lawyering* §60.05 (4th ed. 2015) notes: “Ordinarily, paying for a recommendation of a lawyer’s services is a form of solicitation, and thus prohibited by Model Rule 7.3. Rule 7.2(b), however, provides several commonsense exceptions for a recommendation of services, but where the evils of direct contact solicitation are not present.” The Committee has added the language about employees and lawyers in the same firm to address the reality that lawyers in the same firm routinely pay a portion of earned fees on a matter to the “originating” lawyer in the firm. The policy prohibiting giving anything of value for client referrals reflects the same public policy concerns as the Federal Trade Commission’s restrictions on the use of endorsements and testimonials in advertising, which are premised on the recognition that marketing products and services based on compensated endorsers, without conspicuous disclosure of the details of their connections, is unfair and deceptive to consumers. *See* 16 C.F.R. Part 255.

The provision in Model Rule 7.2(b) pertaining to lawyer referral services has been carried forward without change to paragraph (f)(2) to permit, among other things, lawyers to pay charges for prepaid plans and not-for-profit or “qualified lawyer referral service.” The language was modified in 2000 because, as the Reporter’s Notes to the *ABA Ethics 2000 Commission Proposed Amendments to the Model Rules of Professional Conduct* explain:

This change is intended to more closely conform the Model Rules to ABA policy with respect to lawyer referral services. It recognizes the need to protect prospective clients who have come to think of lawyer referral services as 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.

Comments to Proposed Rule 7.2

Comment [1] to proposed Rule 7.2 is derived from the second sentence in Comment [1] to Model Rule 7.3.

Comments [2] and [3] are Comments [2] and [4] of Model Rule 7.3. No substantive change is intended.

Comment [4] derives from Comment [5] to Model Rule 7.3 and adds a sentence describing who is a sophisticated user of legal services. Comment [5] carries over Comment [8] to Model Rule 7.3. Comments [6] and [7] are based on Comments [6] and [7] of Model Rule 7.3. Comment [8] derives from Comment [9] of Model Rule 7.3

Comments [9] – [11] are Comments [5], [6] and [8] from Model Rule 7.2.

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ATTACHMENT A

***APRL Proposed Amendments to
ABA Model Rule of Professional Conduct 7.2
[CLEAN VERSION]***

Rule 7.2 Solicitation of Clients

Solicitation

(a) A solicitation is a targeted communication initiated by or on behalf of a lawyer, that is directed to a specific person and that offers to provide, or can reasonably be understood as offering to provide, legal services for a particular matter.

(b) Except as provided in paragraphs (c) and (e), a lawyer shall not solicit in person by face-to-face contact or live telephone, or permit employees or agents of the lawyer to solicit in person or by live telephone on the lawyer's behalf, professional employment from a prospective client when a significant motive for doing so is the lawyer's pecuniary gain, unless the person contacted:

- (1) is a lawyer;
- (2) is a sophisticated user of legal services;
- (3) is pursuant to a court-ordered class action notification; or
- (4) has a family, close personal, or prior professional relationship with the lawyer.

Written Solicitation

(c) Every written, recorded or electronic solicitation by or on behalf of a lawyer seeking professional employment from anyone known to be in need of legal services in a particular matter shall include the words "Advertising Material" 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 (b)(1)-(4).

Limitation on Solicitation

(d) A lawyer shall not solicit professional employment from any person 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.

Prepaid and Group Legal Services Plans

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

Paying Others to Recommend a Lawyer

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(f) A lawyer shall not compensate, give or promise anything of value to a person who is not an employee or lawyer in the same law firm for the purpose of recommending or securing the services of the lawyer or the lawyer's law firm, except that a lawyer may:

- (1) pay the reasonable costs of advertisements and other communications permitted by Rule 7.1, including online group advertising;
- (2) pay the usual charges of a legal service 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;
- (3) pay for a law practice in accordance with Rule 1.17; and
- (4) refer clients to another lawyer or a nonlawyer professional pursuant to an agreement not otherwise prohibited under these Rules that provides for the other person to refer clients or customers to the lawyer, if:
 - (i) the reciprocal referral agreement is not exclusive; and
 - (ii) the client is informed of the existence and nature of the agreement.

Comment

Solicitation

[1] A lawyer's communication typically does not constitute a solicitation if it is directed to the general public, such as through a billboard, an Internet banner advertisement, a website or a television commercial, or if it is in response to a request for information or is automatically generated in response to Internet searches.

[2] There is a potential for abuse when a solicitation involves in-person, face-to-face or live telephone contact by a lawyer with someone known to need legal services. This form of contact subjects a person to the private importuning of the trained advocate in a direct interpersonal encounter. The person, who may already feel overwhelmed by the circumstances giving rise to the need for legal services, may find it difficult to fully evaluate all available alternatives with reasoned judgment and appropriate self-interest in the face of the lawyer's presence and insistence upon being retained immediately. The situation is fraught with the possibility of undue influence, intimidation, and over-reaching.

[3] The use of general advertising and written, recorded or electronic communications to transmit information from lawyers to the public, rather than direct in-person, face-to-face or live telephone communication, will help to assure that the information flows cleanly as well as freely. The contents of advertisements and communications permitted under Rule 7.1 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 in-person, face-to-face or live telephone communication 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. All solicitations permitted under this Rule must comply with the prohibition in Rule 7.1 against false and misleading communications

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[4] There is far less likelihood that a lawyer would engage in abusive practices against a former client, or a person with whom the lawyer has a close personal or family 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 a sophisticated user of legal services. A sophisticated user of legal services is an individual who has had significant dealings with the legal profession or who regularly retains legal services for business purposes. Consequently, the general prohibition in paragraph (b) and the requirements in paragraph (c) are not applicable in those situations. Also, paragraph (b) is not intended to prohibit a lawyer from participating in constitutionally protected activities of public or charitable legal-service organizations or bona fide political, social, civic, fraternal, employee or trade organizations whose purposes include providing or recommending legal services to their members or beneficiaries.

[5] The requirement in paragraph (c) that certain communications be marked "Advertising Material" does not apply to communications sent in response to requests of potential clients or their spokespersons or sponsors. General announcements by lawyers, including changes in personnel or office location, do not constitute communications soliciting professional employment from a client known to be in need of legal services within the meaning of this Rule.

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

[7] This Rule is 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 prospective clients of the lawyer. Under these circumstances, the activity that 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 7.1.

[8] Paragraph (e) of this Rule permits a lawyer to participate with an organization that 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 who would be a provider of legal services through the plan. The organization must not be owned by or directed (whether as manager or otherwise) by any lawyer or law firm that participates in the plan. For example, paragraph (e) would not permit a lawyer to create an organization controlled directly or indirectly by the lawyer and use the organization for the in-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 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 7.1 and this Rule. See Rule 8.4(a).

Paying Others to Recommend a Lawyer

[9] Except as permitted under paragraphs (f)(1)-(f)(4), lawyers are not permitted to pay others for recommending the lawyer's services or for channeling professional work in a manner that violates Rules 7.1 and this Rule. A communication contains a recommendation if it endorses or vouches for a lawyer's credentials, abilities, competence, character, or other professional qualities. Paragraph (f)(1), however, allows a lawyer to pay for advertising and solicitations permitted by Rule 7.1 and 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 and website designers, as long as the employees, agents and vendors do not direct or regulate the lawyer's professional judgment (see Rule 5.4(c)). 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 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 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).

[10] A lawyer may pay the usual charges of a legal service plan or a not-for-profit or qualified lawyer referral service. A legal service plan is a prepaid or group legal service plan or a similar delivery system that assists people who seek to secure legal representation. A lawyer referral service, on the other hand, is any organization that holds itself out to the public as a lawyer referral service. Such referral services are understood by the public to be consumer-oriented organizations that provide unbiased referrals to lawyers with appropriate experience in the subject matter of the representation and afford other client protections, such as complaint procedures or malpractice insurance requirements. Consequently, this Rule only permits a lawyer to pay the usual charges of a not-for-profit or qualified lawyer referral service. A qualified lawyer referral service is one that is approved by an appropriate regulatory authority as affording adequate protections for the public. See, e.g., the American Bar Association's Model Supreme Court Rules Governing Lawyer Referral Services and Model Lawyer Referral and Information Service Quality Assurance Act (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 the public; (ii) require each participating lawyer to carry reasonably adequate malpractice insurance; (iii) act reasonably to assess client satisfaction and address client complaints; and (iv) do not make referrals to lawyers who own, operate or are employed by the referral service.)

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

*APRL Proposed Amendments to
ABA Model Rules of Professional Conduct 7.2 and 7.3*
[REDLINE VERSION]

Rule 7.2 ~~Advertising~~Solicitation of Clients

Solicitation

(a) ~~Subject to the requirements of Rules 7.1 and 7.3, a lawyer may advertise services through written, recorded or electronic communication, including public media. A solicitation is a targeted communication initiated by or on behalf of a lawyer, that is directed to a specific person and that offers to provide, or can reasonably be understood as offering to provide, legal services for a particular matter.~~

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(b) ~~Except as provided in paragraphs (c) and (e), a lawyer shall not solicit in person by face-to-face contact or live telephone, or permit employees or agents of the lawyer to solicit in person or by live telephone on the lawyer's behalf, professional employment from a prospective client when a significant motive for doing so is the lawyer's pecuniary gain, unless the person contacted:~~

~~(4) is a lawyer;~~

~~(5) is a sophisticated user of legal services;~~

~~(6) is pursuant to a court-ordered class action notification; or~~

~~(4) has a family, close personal, or prior professional relationship with the lawyer.~~

Written Solicitation

(c) ~~Every written, recorded or electronic solicitation by or on behalf of a lawyer seeking professional employment from anyone known to be in need of legal services in a particular matter shall include the words "Advertising Material" 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 (b)(1)-(4).~~

Limitation on Solicitation

(d) ~~A lawyer shall not solicit professional employment from any person 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.~~

Prepaid and Group Legal Services Plans

(e) ~~Notwithstanding the prohibitions in paragraph (b), a lawyer may participate with a prepaid or group legal service plan operated by an organization not owned or directed by the lawyer that uses in-person 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.~~

Paying Others to Recommend a Lawyer

APRL SUPPLEMENTAL PROPOSAL 4/26/16

(f) A lawyer shall not compensate, give or promise anything of value to a person who is not an employee or lawyer in the same law firm for the purpose of recommending or securing the lawyer's services of the lawyer or law firm, except that a lawyer may:

- (1) pay the reasonable costs of advertisements or communications permitted by ~~this~~ Rule 7.1 including online group advertising;
- (2) pay the usual charges of a legal service 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;
- (3) pay for a law practice in accordance with Rule 1.17; and
- (4) refer clients to another lawyer or a nonlawyer professional pursuant to an agreement not otherwise prohibited under these Rules that provides for the other person to refer clients or customers to the lawyer, if
 - (i) the reciprocal referral agreement is not exclusive, and
 - (ii) the client is informed of the existence and nature of the agreement.

~~(e) Any communication made pursuant to this rule shall include the name and office address of at least one lawyer or law firm responsible for its content.~~

Comment

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

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

~~[3] Questions of effectiveness and taste in advertising are matters of speculation and subjective judgment. Some jurisdictions have had extensive prohibitions against television and other forms of advertising, against advertising going beyond specified facts about a lawyer, or against "undignified" advertising. Television, the Internet, and other forms of electronic communication are now among the most powerful media for getting information to the public, particularly persons of low and moderate income; prohibiting television, Internet, and other forms of electronic advertising, therefore, would impede the flow of information about legal services to many sectors of the public. Limiting the information that may be advertised has a similar effect and assumes that the bar can accurately forecast the kind of information that the public would~~

~~regard as relevant. But 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. [portions of these Comments were moved to the Comments to 7.1]~~

Solicitation

~~[1] A lawyer's communication typically does not constitute a solicitation if it is directed to the general public, such as through a billboard, an Internet banner advertisement, a website or a television commercial, or if it is in response to a request for information or is automatically generated in response to Internet searches.~~

~~[2] There is a potential for abuse when a solicitation involves in-person, face-to-face or live telephone contact by a lawyer with someone known to need legal services. This form of contact subjects a person to the private importuning of the trained advocate in a direct interpersonal encounter. The person, who may already feel overwhelmed by the circumstances giving rise to the need for legal services, may find it difficult to fully evaluate all available alternatives with reasoned judgment and appropriate self-interest in the face of the lawyer's presence and insistence upon being retained immediately. The situation is fraught with the possibility of undue influence, intimidation, and over-reaching.~~

~~[3] The use of general advertising and written, recorded or electronic communications to transmit information from lawyers to the public, rather than direct in-person, face-to-face or live telephone communication, will help to assure that the information flows cleanly as well as freely. The contents of advertisements and communications permitted under Rule 7.1 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 in-person, face-to-face or live telephone communication 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. All solicitations permitted under this Rule must comply with the prohibition in Rule 7.1 against false and misleading communications~~

~~[4] There is far less likelihood that a lawyer would engage in abusive practices against a former client, or a person with whom the lawyer has a close personal or family 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 a sophisticated user of legal services. A sophisticated user of legal services is an individual who has had significant dealings with the legal profession or who regularly retains legal services for business purposes. Consequently, the general prohibition in paragraph (b) and the requirements in paragraph (c) are not applicable in those situations. Also, paragraph (b) is not intended to prohibit a lawyer from participating in constitutionally protected activities of public or charitable legal-service organizations or bona fide political, social, civic, fraternal, employee or trade~~

organizations whose purposes include providing or recommending legal services to their members or beneficiaries.

[5] The requirement in paragraph (c) that certain communications be marked "Advertising Material" does not apply to communications sent in response to requests of potential clients or their spokespersons or sponsors. General announcements by lawyers, including changes in personnel or office location, do not constitute communications soliciting professional employment from a client known to be in need of legal services within the meaning of this Rule.

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

[7] This Rule is 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 prospective clients of the lawyer. Under these circumstances, the activity that 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 7.1.

[8] Paragraph (e) of this Rule permits a lawyer to participate with an organization that 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 who would be a provider of legal services through the plan. The organization must not be owned by or directed (whether as manager or otherwise) by any lawyer or law firm that participates in the plan. For example, paragraph (e) would not permit a lawyer to create an organization controlled directly or indirectly by the lawyer and use the organization for the in-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 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 7.1 and this Rule. See Rule 8.4(a).

Paying Others to Recommend a Lawyer

[9] Except as permitted under paragraphs (b)(1)-(b)(4), lawyers are not permitted to pay others for recommending the lawyer's services or for channeling professional work in a manner that violates Rule 7.3 and this Rule. A communication contains a recommendation if it

endorses or vouches for a lawyer's credentials, abilities, competence, character, or other professional qualities. Paragraph (b)(1), however, allows a lawyer to pay for advertising and ~~communications solicitations~~ permitted by Rule 7.1 and 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 and website designers, as long as the employees, agents and vendors do not direct or regulate the lawyer's professional judgment (See Rule 5.4(c)). 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 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 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).

[106] A lawyer may pay the usual charges of a legal service plan or a not-for-profit or qualified lawyer referral service. A legal service plan is a prepaid or group legal service plan or a similar delivery system that assists people who seek to secure legal representation. A lawyer referral service, on the other hand, is any organization that holds itself out to the public as a lawyer referral service. Such referral services are understood by the public to be consumer-oriented organizations that provide unbiased referrals to lawyers with appropriate experience in the subject matter of the representation and afford other client protections, such as complaint procedures or malpractice insurance requirements. Consequently, this Rule only permits a lawyer to pay the usual charges of a not-for-profit or qualified lawyer referral service. A qualified lawyer referral service is one that is approved by an appropriate regulatory authority as affording adequate protections for the public. See, e.g., the American Bar Association's Model Supreme Court Rules Governing Lawyer Referral Services and Model Lawyer Referral and Information Service Quality Assurance Act (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 the public; (ii) require each participating lawyer to carry reasonably adequate malpractice insurance; (iii) act reasonably to assess client satisfaction and address client complaints; and (iv) do not make referrals to lawyers who own, operate or are employed by the referral service.)

~~[7] A lawyer who accepts assignments or referrals from a legal service plan or referrals from a lawyer referral service must act reasonably to assure that the activities of the plan or service are compatible with the lawyer's professional obligations. See Rule 5.3. Legal service plans and lawyer referral services may communicate with the public, but such communication must be in conformity with these Rules. Thus, advertising must not be false or misleading, as would be the case if the communications of a group advertising program or a group legal services plan would~~

~~mislead the public to think that it was a lawyer referral service sponsored by a state agency or bar association. Nor could the lawyer allow in person, telephonic, or real time contacts that would violate Rule 7.3.~~

[~~8~~11] A lawyer also may agree to refer clients to another lawyer or a nonlawyer professional, in return for the undertaking of that person to refer clients or customers to the lawyer. Such reciprocal referral arrangements must not interfere with the lawyer's professional judgment as to making referrals or as to providing substantive legal services. See Rules 2.1 and 5.4(c). Except as provided in Rule 1.5(e), a lawyer who receives referrals from a lawyer or nonlawyer professional must not pay anything solely for the referral, but the lawyer does not violate paragraph (b) of this Rule by agreeing to refer clients to the other lawyer or nonlawyer professional, so long as the reciprocal referral agreement is not exclusive and the client is informed of the referral agreement. Conflicts of interest created by such arrangements are governed by Rule 1.7. Reciprocal referral agreements should not be of indefinite duration and should be reviewed periodically to determine whether they comply with these Rules. This Rule does not restrict referrals or divisions of revenues or net income among lawyers within firms comprised of multiple entities.

Rule 7.3 Solicitation of Clients

~~(a) A lawyer shall not by in person, live telephone or real time electronic contact solicit professional employment when a significant motive for the lawyer's doing so is the lawyer's pecuniary gain, unless the person contacted:~~

~~(1) is a lawyer; or~~

~~(2) has a family, close personal, or prior professional relationship with the lawyer.~~

~~(b) A lawyer shall not solicit professional employment 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.~~

~~(c) Every written, recorded or electronic communication from a lawyer soliciting professional employment from anyone known to be in need of legal services in a particular matter shall include the words "Advertising Material" 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).~~

~~(d) Notwithstanding the prohibitions in paragraph (a), a lawyer may participate with a prepaid or group legal service plan operated by an organization not owned or directed by the lawyer that uses in 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

[1] A solicitation is a targeted communication initiated by the lawyer that is directed to a specific person and that offers to provide, or can reasonably be understood as offering to provide, legal services. In contrast, a lawyer's communication typically does not constitute a solicitation if it is directed to the general public, such as through a billboard, an Internet banner advertisement, a website or a television commercial, or if it is in response to a request for information or is automatically generated in response to Internet searches.

[2] 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. These forms of contact subject 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. The situation is fraught with the possibility of undue influence, intimidation, and over-reaching.

[3] This potential for abuse inherent in direct in-person, live telephone or real-time electronic solicitation justifies its prohibition, particularly since lawyers have alternative means of conveying necessary information to those who may be in need of legal services. In particular, communications can be mailed or transmitted by email or other electronic means that do not involve real-time contact and do not violate other laws governing solicitations. These forms of communications and solicitations make it possible for the public to be informed about the need for legal services, and about the qualifications of available lawyers and law firms, without subjecting the public to direct in-person, telephone or real-time electronic 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 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 against a former client, or a person with whom the lawyer has a close personal or family relationship, or in situations in which the lawyer is motivated by considerations other than the lawyer's pecuniary gain. Nor is there a serious potential for abuse when the person contacted is a lawyer. Consequently, the general prohibition in Rule 7.3(a) and the requirements of Rule 7.3(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 their members or beneficiaries.~~

~~[6] But 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 involves coercion, duress or harassment within the meaning of Rule 7.3(b)(2), or which 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).~~

~~[7] This Rule is 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 prospective clients of the lawyer. Under these circumstances, the activity which the lawyer undertakes in communicating with such representatives and the type of information transmitted to the individual are functionally similar to and serve the same purpose as advertising permitted under Rule 7.2.~~

~~[8] The requirement in Rule 7.3(e) that certain communications be marked "Advertising Material" does not apply to communications sent in response to requests of potential clients or their spokespersons or sponsors. General announcements by lawyers, including changes in personnel or office location, do not constitute communications soliciting professional employment from a client known to be in need of legal services within the meaning of this Rule.~~

~~[9] Paragraph (d) of this Rule permits a lawyer 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 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 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 be designed to inform potential plan members generally of another means of affordable legal services. Lawyers who participate in a legal service plan must reasonably assure that the plan sponsors are in compliance with Rules 7.1, 7.2 and 7.3(b). See 8.4(a).~~

~~(substance of ER 7.3 moved to new ER 7.2(a), (b), (c), and (d))~~