

Pennsylvania Rules Of Professional Conduct

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INFORMATION ABOUT LEGAL SERVICES

Rule 7.1 Communications Concerning a Lawyer's Services

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 contains a material misrepresentation of fact or law, or omits a fact necessary to make the statement considered as a whole not materially misleading.

Comment:

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. 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.
3. An advertisement 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 comparison of the lawyer's services or fees with the services or fees of other lawyers may be misleading if presented with such specificity as would lead a reasonable person to conclude that the comparison can be substantiated. The inclusion of an appropriate disclaimer or qualifying language may preclude a finding that a statement is likely to create unjustified expectations or otherwise mislead the public.
4. See also Rule 8.4(e) for the prohibition against stating or implying an ability to influence improperly a government agency or official or to achieve results by means that violate the Rules of Professional Conduct or other law.

Rule 7.2 Advertising

- a. Subject to the requirements of Rule 7.1, a lawyer may advertise services through written, recorded or electronic communications, including public media, not within the purview of Rule 7.3.

- b. A copy or recording of an advertisement or written communication shall be kept for two years after its last dissemination along with a record of when and where it was used. This record shall include the name of at least one lawyer responsible for its content.
- c. A lawyer shall not give anything of value to a person for recommending the lawyer's services, except that a lawyer may pay:
 - 1. the reasonable cost of advertisements or written communications permitted by this Rule;
 - 2. the usual charges of a lawyer referral service or other legal service organization; and
 - 3. for a law practice in accordance with Rule 1.17.
- d. No advertisement or public communication shall contain an endorsement by a celebrity or public figure.
- e. An advertisement or public communication that contains a paid endorsement shall disclose that the endorser is being paid or otherwise compensated for his or her appearance or endorsement.
- f. A non-lawyer shall not portray a lawyer or imply that he or she is a lawyer in any advertisement or public communication; nor shall an advertisement or public communication portray a fictitious entity as a law firm, use a fictitious name to refer to lawyers not associated together in a law firm, or otherwise imply that lawyers are associated together in a law firm if that is not the case.
- g. An advertisement or public communication shall not contain a portrayal of a client by a non-client; the re-enactment of any events or scenes; or, pictures or persons, which are not actual or authentic, without a disclosure that such depiction is a dramatization.
- h. Every advertisement that contains information about the lawyer's fee, shall be subject to the following requirements:
 - 1. Advertisements that state or indicate that no fee shall be charged in the absence of recovery shall disclose that the client will be liable for certain expenses in addition to the fee, if such is the case.
 - 2. A lawyer who advertises a specific fee or hourly rate or range of fees for a particular service shall honor the advertised fee for at least ninety (90) days; provided that for advertisements in media published annually, the advertised fee shall be honored for no less than one (1) year following initial publication unless otherwise stated as part of the advertisement.
- i. All advertisements and written communications shall disclose the geographic location, by city or town, of the office in which the lawyer or lawyers who will actually perform the services advertised principally practice law. If the office location is outside the city or town, the county in which the office is located must be disclosed.
- j. A lawyer shall not, directly or indirectly (whether through an advertising cooperative or otherwise), pay all or any part of the costs of an advertisement by a lawyer not in the same firm or by any for-profit entity other than the lawyer's firm, unless the advertisement discloses the name and principal office address of each lawyer or law firm involved in paying for the advertisement and, if any lawyer or law firm will receive referrals from the advertisement, the circumstances under which referrals will be made and the basis and criteria on which the referral system operates.

- k. A lawyer shall not, directly or indirectly, advertise that the lawyer or his or her law firm will only accept, or has a practice limited to, particular types of cases unless the lawyer or his or her law firm handles, as a principal part of his, her or its practice, all aspects of the cases so advertised from intake through trial. If a lawyer or law firm advertises for a particular type of case that the lawyer or law firm ordinarily does not handle from intake through trial, that fact must be disclosed. A lawyer or law firm shall not advertise as a pretext to refer cases obtained from advertising to other lawyers.

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 a notice to members of a class in class action litigation.

Record of Advertising

5. Paragraph (b) requires that a record of the content and use of advertising be kept in order to facilitate enforcement of this Rule. It does not require that advertising be subject to

review prior to dissemination. Such a requirement would be burdensome and expensive relative to its possible benefits, and may be of doubtful constitutionality.

Paying Others to Recommend a Lawyer

6. Subject to the limitations set forth under paragraphs (c) and (j), a lawyer is allowed to pay for advertising permitted by this Rule, but otherwise is not permitted to pay another person 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. Paragraph (c)(1), however, allows a lawyer to pay for advertising and communications permitted by this Rule, including the cost of print, directory listings, on-line directory listings, newspaper ads, television and radio air time, 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. 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) and 5.4, and the lead generator's communications are consistent with Rule 7.1. 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 for the duties of lawyers and law firms with respect to the conduct of non-lawyers and Rule 8.4(a). This restriction does not prevent an organization or person other than the lawyer from advertising or recommending the lawyer's services. Thus, a legal aid agency or prepaid legal services plan may pay to advertise legal services provided under its auspices. Likewise, a lawyer may participate in lawyer referral programs and pay the usual fees charged by such programs. Paragraph (c) does not prohibit paying regular compensation to an assistant, such as a secretary, to prepare communications permitted by this Rule.

Endorsements

7. Paragraphs (d) and (e) require truthfulness in any advertising in which an endorsement of a lawyer or law firm is made. The prohibition against endorsement by a celebrity or public figure is consistent with the purpose of Rule 7.1 to avoid the creation of an unjustified expectation of a particular legal result on the part of a prospective client.

Portrayals

8. Paragraphs (f) and (g), similarly, require truth in advertising when portrayals are made part of legal advertising. A portrayal, by its nature, is a depiction of a person, event or scene, not the actual person, event or scene itself. Paragraphs (f) and (g) were added to ensure that any portrayals used in advertising legal services are not misleading or

overreaching. Creating the impression that lawyers are associated in a firm where that is not the case was considered inherently misleading because it suggests that the various lawyers involved are available to support each other and contribute to the handling of a case. Paragraph (f) accordingly prohibits advertisements that create the impression of a relationship among lawyers where none exists, such as by using a fictitious name to refer to the lawyers involved if they are not associated together in a firm.

Disclosure of Fees and Client Expenses

9. Consistent with the public's need to have an accurate dissemination of information about the cost of legal services, paragraph (h) requires disclosure of a client's responsibility for payment of expenses in contingent fee matters when the client will be required to pay any portion of expenses that will be incurred in the handling of a legal matter.
10. Under the same rationale, paragraph (h) imposes minimum periods of time during which advertised fees must be honored.

Disclosure of Geographic Location of Practice

11. Paragraph (i) requires disclosure of the geographic location in which the advertising lawyer's primary practice is situated. This provision seeks to rectify situations in which a person seeking legal services is misled into concluding that an advertising lawyer has his or her primary practice in the client's hometown when, in fact, the advertising lawyer's primary practice is located elsewhere. Paragraph (i) ensures that a client has received a disclosure as to whether the lawyer he or she ultimately chooses maintains a primary practice located outside of the client's own city, town or county.

Disclosure of Payment of Advertising Costs

12. Paragraph (j) prohibits lawyers and law firms from paying advertising costs of independent lawyers or other persons unless disclosure is made in the advertising of the name and address of each paying lawyer or law firm, as well as of the business relationship between the paying parties and the advertising parties.
13. Advertisements sponsored by advertising cooperatives (where lawyers or law firms pool resources to buy advertising space or time) are considered advertisements by each of the lawyers participating in the cooperative and accordingly will be subject generally to all of the provisions of these Rules on advertising. Advertising cooperatives have been referred to expressly in paragraph (j) to make clear that references to "indirect" actions are intended to have a wide scope and include advertising cooperatives and similar arrangements. Thus, advertising cooperatives and similar arrangements are permissible, but only if the required disclosures are made. In the case of cooperative arrangements, the required disclosures must include the basis or criteria on which lawyers or law firms participating in the cooperative will be referred cases, e.g., chronological order of calls, geographic location, etc.
14. Paragraph (k) prohibits a lawyer from misleading the public by giving the impression in an advertisement that the lawyer or his or her law firm specializes in a particular area of the law unless the lawyer or his or her law firm handles the type of case advertised as a

principal part of the practice of the lawyer or law firm. For example, where a lawyer advertises for “personal injury cases” or “serious personal injury cases” or “death cases only” those types of cases must, in fact, constitute a principal part of the practice of the lawyer or his or her firm.

15. Paragraph (k) also prohibits advertising for the primary purposes of obtaining cases that can be referred or brokered to another lawyer. Obviously, a lawyer is permitted and encouraged to refer cases to other lawyers where that lawyer does not have the skill or expertise to properly represent a client. However, it is misleading to the public for a lawyer or law firm, with knowledge that the lawyer or law firm will not be handling a majority of the cases attracted by advertising, to nonetheless advertise for those cases only to refer the cases to another lawyer whom the client did not initially contact. In addition, a lawyer who advertises for a particular type of case may not mislead the client into believing that the lawyer or law firm will fully represent that client when, in reality, the lawyer or law firm refers all of its non-settling cases to another law firm for trial.

Rule 7.3 Solicitation of Clients

- a. A lawyer shall not solicit in-person or by intermediary professional employment from a person with whom the lawyer has no family or prior professional relationship when a significant motive for the lawyer’s doing so is the lawyer’s pecuniary gain, unless the person contacted is a lawyer or has a family, close personal, or prior professional relationship with the lawyer. The term "solicit" includes contact in-person, by telephone or by real-time electronic communication, but, subject to the requirements of Rule 7.1 and Rule 7.3(b), does not include written communications, which may include targeted, direct mail advertisements.
- b. A lawyer may contact, or send a written communication to, the target of the solicitation for the purpose of obtaining professional employment unless:
 1. the lawyer knows or reasonably should know that the physical, emotional or mental state of the person is such that the person could not exercise reasonable judgment in employing a lawyer;
 2. the person has made known to the lawyer a desire not to receive communications from the lawyer; or
 3. the communication involves coercion, duress, or harassment.

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 a 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 from 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) is 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)(3), or which involves contact with someone who has made known to the lawyer desire not to be solicited by the lawyer within the meaning of Rule 7.3(b)(2) 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 purposes 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.

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. A lawyer shall not state that the lawyer is a specialist except as follows:
 1. 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;
 2. a lawyer engaged in admiralty practice may use the designation "admiralty," "proctor in admiralty" or a substantially similar designation;
 3. a lawyer who has been certified by an organization approved by the Supreme Court of Pennsylvania as a certifying organization in accordance with paragraph (b) may advertise the certification during such time as the certification of the lawyer and the approval of the organization are both in effect;
 4. a lawyer may communicate that the lawyer is certified in a field of practice only when that communication is not false or misleading and that certification is granted by the Supreme Court of Pennsylvania.
- b. Upon recommendation of the Pennsylvania Bar Association, the Supreme Court of Pennsylvania may approve for purposes of paragraph (a) an organization that certifies lawyers, if the Court finds that:
 1. advertising by a lawyer of certification by the certifying organization will provide meaningful information, which is not false, misleading or deceptive, for use of the public in selecting or retaining a lawyer; and
 2. certification by the organization is available to all lawyers who meet objective and consistently applied standards relevant to practice in the area of the law to which the certification relates.

The approval of the certifying organization shall be for such period not longer than five (5) years as the Court shall order, and may be renewed upon recommendation of the Pennsylvania Bar Association.

Comment:

1. This Rule permits a lawyer to indicate areas of practice in communications about the lawyer's services; for example, in a telephone directory or other advertising. If a lawyer practices only in certain fields, or will not accept matters except in such fields, the lawyer is permitted so to indicate. However, stating that the lawyer is a "specialist" is not permitted unless the lawyer has been certified as a specialist by a certifying organization approved under the procedure of paragraph (b). The standards in paragraph (b)(1) and (2) are intended to comply with the requirements for advertising claims of specialization set forth in *Peel v. Attorney Registration and Disciplinary Commission of Illinois*, 496 U. S. 91, 110 L.Ed.2d 83, 110 S.Ct. 2281 (1990).

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, government agency or with a public or charitable legal services organization and is not otherwise in violation of Rule 7.1. If otherwise lawful a firm may use as, or continue to include in, its name, the name or names of one or more deceased or retired members of the firm or of a predecessor firm in a continuing line of succession.
- b. A law firm with offices in more than one jurisdiction may use the same name or other professional designation in each jurisdiction, but identification of the lawyers in an office of the firm shall indicate the jurisdictional limitations on those not licensed to practice in the jurisdiction where the office is located.
- c. The name of a lawyer holding a public office shall not be used in the name of a law firm, or in communications on its behalf, during any substantial period in which the lawyer is not actively and regularly practicing with the firm.
- d. Lawyers shall not state or imply that they practice in a partnership or other organization unless 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 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. Although the United States Supreme Court has held that legislation may prohibit the use of trade names in professional practice, use of such names in law practice is acceptable so long as it is not misleading. If a private firm uses a trade name that includes a geographical name such as "Springfield Legal Clinic," an express disclaimer that it is a public legal aid agency may be required to avoid a misleading implication. It may be observed that any firm name including the name of a deceased partner is, strictly speaking, a trade name. The use of such names to designate law firms has proven a useful means of identification. However, it is misleading to use the name of a lawyer not associated with the firm or a predecessor of the firm, or the name of a nonlawyer.

2. With regard to paragraph (d), lawyers sharing office facilities, but who are not in fact associated with each other in a law firm, may not denominate themselves as, for example, “Smith and Jones,” for that title suggests that they are practicing law together in a firm.

Rule 7.6. [Reserved]

Rule 7.7 Lawyer Referral Service

- a. A lawyer shall not accept referrals from a lawyer referral service if the service engaged in communication with the public or direct contact with prospective clients in a manner that would violate the Rules of Professional Conduct if the communication or contact were made by the lawyer.
- b. A "lawyer referral service" is any person, group of persons, association, organization or entity that receives a fee or charge for referring or causing the direct or indirect referral of a potential client to a lawyer drawn from a specific group or panel of lawyers.

Comment:

1. This Rule prevents a lawyer from circumventing the Rules of Professional Conduct by using a lawyer referral service or similar organization which would not be subject to the Rules of Professional Conduct. A lawyer may pay the usual charges of a lawyer referral service. A lawyer may not, however, share legal fees with a non-lawyer. See Rule 5.4(a).