

Alabama Rules of Professional Conduct

Information About Legal Services

Rule 7.2.

Advertising.

A lawyer who advertises concerning legal services shall comply with the following:

(a) Subject to the requirements of Rule 7.1, a lawyer may advertise services through public media, such as a telephone directory, legal directory, newspaper or other periodical, outdoor displays, radio, television, or written communication not involving solicitation as defined in Rule 7.3.

(b) A true copy or recording of any such advertisement shall be delivered or mailed to the office of the general counsel of the Alabama State Bar at its then current headquarters within three (3) days after the date on which any such advertisement is first disseminated; the contemplated duration thereof and the identity of the publisher or broadcaster of such advertisement, either within the advertisement or by separate communication accompanying said advertisement, shall be stated. Also, a copy or recording of any such advertisement shall be kept by the lawyer responsible for its content, as provided hereinafter by Rule 7.2(d), for six (6) years after its last dissemination.

(c) A lawyer shall not give anything of value to a person for recommending the lawyer's services, except that a lawyer may pay the reasonable cost of any advertisement or written communication permitted by this rule and may pay the usual charges of a not-for-profit lawyer referral service.

(d) Any communication made pursuant to this rule shall include the name of at least one lawyer responsible for its content.

(e) No communication concerning a lawyer's services shall be published or broadcast, unless it contains the following language, which shall be clearly legible or audible, as the case may be: "No representation is made that the quality of the legal services to be performed is greater than the quality of legal services performed by other lawyers."

(f) If fees are stated in the advertisement, the lawyer or law firm advertising must perform the advertised services at the advertised fee, and the failure of the lawyer and/or law firm advertising to perform an advertised service at the advertised fee shall be prima facie evidence of misleading advertising and deceptive practices. The lawyer or law firm advertising shall be bound to perform the advertised services for the

advertised fee and expenses for a period of not less than sixty (60) days following the date of the last publication or broadcast.

Comment

To assist the public in 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.

This Rule permits public dissemination of information concerning a lawyer's name or firm name, address 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.

Some jurisdictions have had extensive prohibitions against television advertising, against advertising going beyond specified facts about a lawyer, or against "undignified" advertising. Television is now one of the most powerful media for getting information to the public, particularly persons of low and moderate income; prohibiting television advertising, therefore, would impede 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.

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

Record of Advertising

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

A lawyer is allowed to pay for advertising permitted by this Rule, but otherwise is not permitted to pay another person for channeling professional work. 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 not-for-profit 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.

Comparison with Former Alabama Code of Professional Responsibility

Rule 7.2 is based on Temporary DR 2-102, which was substantially adopted from Model Rule 7.2.