

Office of General Counsel

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April 22, 2021

VIA: Hand-Delivery

Mrs. Julia Jordan Weller
Clerk of Court
Office of the Clerk
300 Dexter Avenue
Montgomery, AL 36104



RE: Proposed Rule Changes

Dear Mrs. Weller:

Enclosed is a petition requesting that the Alabama Supreme Court adopt the enclosed Amended Rules 7.1 – 7.6 of the *Alabama Rules of Professional Conduct*.

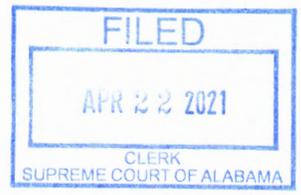
Thank you for your help in this matter. If I can be of any help to you or the Court, please let me know.

Very truly yours,

A handwritten signature in black ink that reads "Roman".

Roman Ashley Shaul
General Counsel

RAS/mgl
Enclosure



IN THE SUPREME COURT OF THE
STATE OF ALABAMA

PETITION TO AMEND RULES 7.1 – 7.6 OF THE
ALABAMA RULES OF PROFESSIONAL CONDUCT

Comes now the Board of Bar Commissioners of the Alabama State Bar, by and through the Office of General Counsel, and petitions this Honorable Court to adopt the proposed amendments to Rules 7.1 – 7.6 of the *Alabama Rules of Professional Conduct*. The attached amendments are an updated and complete overhaul of the rules governing a lawyer's ethical obligations in advertising and communicating with the general public about legal services. It is the intention of the Board of Bar Commissioners that the three proposed amendments replace the current six rules. The Board of Bar Commissioners unanimously approved the proposed amendments.

WHEREFORE, the Alabama State Bar request this Honorable Court, at its next Conference, to consider the proposed changes to Rules 7.1 – 7.6 of the *Alabama Rules of Professional Conduct* and adopt same as attached hereto.

Respectfully submitted this 22nd day of April, 2021.



Roman Ashley Shaul
General Counsel
Alabama State Bar
415 Dexter Avenue
Montgomery, Alabama 36104
334-269-1515

Alabama Rules of Professional Conduct

Information About Legal Services

Rule 7.1.

Communications Concerning a Lawyer's Services.

A lawyer shall not make or cause to be made a false or misleading communication about the lawyer, the lawyer's services or another lawyer's services. A communication is false or misleading if it:

(a) Contains a material misrepresentation of fact or law, or omits a fact necessary to make the statement considered as a whole not materially misleading;

(b) Is likely to create an unjustified expectation about results the lawyer can achieve, or states or implies that the lawyer can achieve results by means that violate the Rules of Professional Conduct or other law;

(c) Compares the quality of the lawyer's services with the quality of other lawyers' services, except as provided in Rule 7.4; or

(d) Communicates the certification of the lawyer by a certifying organization, except as provided in Rule 7.4.

Comments

Under Rule 8.5, Rule 7 applies to lawyers, whether or not admitted to practice in Alabama, who communicate with prospective clients about legal services in Alabama or who direct communications about legal services to Alabama residents.

“Lawyer” includes the lawyer’s law firm.

A prospective client as used in these Rules is someone whom the lawyer considers a potential client, or someone whom the lawyer seeks to represent if given the opportunity. As an example, individuals who watch or hear a lawyer’s commercial or view a billboard or access a lawyer’s website are prospective clients in most instances.

Misleading truthful statements are 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 misleading if a substantial likelihood exists that it will lead a reasonable person to form a specific conclusion about the lawyer or the lawyer’s services for which there is not a reasonable factual foundation. A truthful statement is misleading if it creates a likelihood that a reasonable person would believe the lawyer’s communication requires that person to take further action when, in fact, no action is required.

Lawyers who are not in a firm together may not imply or say that they practice together or are professionally connected.

Although a lawyer from another state may petition an Alabama court to permit admission *pro hac vice* in a specific Alabama action, no law authorizes a *pro hac vice* practice on a general or permanent basis in the state of Alabama. A lawyer not licensed to practice law in Alabama shall not direct a communication about the lawyer’s services to potential clients in Alabama without disclosing that the lawyer is not licensed to practice law in Alabama and without otherwise complying with these Rules.

A communication about a lawyer’s services is subject to these Rules if it reasonably is expected to be seen or heard by Alabama residents and does not specifically state that the lawyer or firm will not represent clients in Alabama.

In certain limited situations, a lawyer not licensed in Alabama may be authorized to provide Alabama residents legal services in another jurisdiction. For example, in a class action suit in another state or in a federal court action in another state, including bankruptcy and immigration, a lawyer not licensed in Alabama may represent Alabama residents in the litigation. Any communication by the lawyer disseminated within Alabama or directed at Alabama residents, however, must comply with these Rules.

Alabama Rules of Professional Conduct

Information About Legal Services

Rule 7.2.

Communications Concerning a Lawyer's Services: Specific Rules.

Subject to the requirements of these Rules, a lawyer may communicate information about that lawyer's services through any lawful media.

A lawyer who communicates with prospective clients concerning legal services shall comply with the following:

(a) A copy of each communication subject to these Rules and a record of the following shall be kept by the lawyer for six (6) years after the communication's dissemination and must be provided promptly to the Office of General Counsel of the Alabama State Bar upon request: (1) the date of the communication; (2) the name and the address, telephone number or email address to which the communication was sent; and (3) the means by which the communication was sent. A failure to retain this information and produce it to the Office of General Counsel promptly upon request is a violation of these Rules.

(b) Any communication subject to these Rules shall state the location – by city, town or county – of the *bona fide* office of at least one lawyer who appears or is identified in the communication. For the purposes of this Rule, a *bona fide* office is a physical location maintained and used by the lawyer from which the lawyer furnishes legal services on a regular and continuing basis. A lawyer who uses a referral service shall ensure that the service discloses the location of the lawyer's *bona fide* office or registered bar address when a referral is made.

(c) If a lawyer featured or identified in a communication subject to these Rules is not licensed in Alabama, the communication must disclose that fact clearly and prominently.

(d) If a lawyer or law firm who communicates with prospective clients in Alabama does not have a *bona fide* office in Alabama, the communication must disclose that fact clearly and prominently.

(e) Each lawyer who appears or is identified in a communication subject to these Rules will be responsible for the content of the communication and its compliance with these Rules. Every communication shall include the name and location of at least one lawyer who is responsible for the communication.

(f) All disclaimers, disclosures and other statements which these Rules require shall be legible and easy to see and read, if written, and easy to hear and understand, if spoken. If displayed visually, the disclosure, disclaimer or other required statement must be displayed for a sufficient time and in writing large enough to enable a viewer to see and read the disclosure or disclaimer. Spoken disclosures, disclaimers and other required statements shall be spoken at the same cadence and at the same or slower rate of speed, and at least the same volume, as the other spoken content of the communication.

(g) Any disclosure, disclaimer or other statement which these Rules requires shall be made in each language used in the communication to which the disclosure, disclaimer or other required statement relates; provided, however, saying that a particular language is spoken or understood by a lawyer does not require a disclosure or disclaimer in that language.

(h) If specific fees are mentioned in the communication, the lawyer must perform the services at the stated fees. The failure of the lawyer to perform the service at the stated fees shall be *prima facie* evidence of misleading and deceptive practices. The lawyer shall be

bound to perform the services for the stated fees for at least ninety (90) days after the date of the last communication referencing the stated fees.

(i) A communication which represents that (1) the charging of a fee is contingent on success, (2) no fee will be charged in the absence of recovery, or (3) the fee will be a percentage of recovery, or similar statement, shall disclose clearly and prominently if the client will be responsible for court costs or other expenses of litigation even if there is no recovery.

(j) A lawyer shall not compensate, give or promise anything of value to a person for recommending the lawyer's services except that a lawyer may:

- (1) pay the usual costs of communications permitted by this Rule; except that no lawyer shall pay for the cost of communication of another lawyer not in the same firm unless (a) the lawyers have agreed to work together and jointly represent clients in the matter referenced in the communication, and (b) the agreement does not violate any other provisions of these Rules;
- (2) pay the usual charges of a not-for-profit lawyer referral service, or not-for-profit legal aid agency or entity recognized as legitimate by the Office of General Counsel;
- (3) pay a sponsorship fee or make a charitable or other non-profit organization contribution which will result in the lawyer being recognized or listed as having sponsored or contributed to the organization;
- (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 referral agreement is not exclusive; and

(ii) the client is informed of the existence and nature of the agreement;

(5) give nominal gifts as an expression of appreciation that are neither intended nor reasonably expected to be a form of compensation for recommending a lawyer's services.

(k) Communications promising or predicting success or a specific result are prohibited.

(l) A lawyer shall not communicate practice areas in which the lawyer does not currently practice or intend to practice. A lawyer shall not make communications concerning legal services that would cause a reasonable prospective client to believe that the lawyer making the communication would handle the matter for the prospective client if the lawyer normally or probably would not handle the matter and would refer the matter to a lawyer in a different firm or practice, unless the following is clearly and prominently disclosed:

(1) "MOST CASES OF THIS TYPE ARE NOT HANDLED BY THIS LAWYER/FIRM BUT ARE REFERRED TO OTHER ATTORNEYS", or, if applicable:

(2) "MOST CASES OF THIS TYPE ARE REFERRED TO OTHER ATTORNEYS FOR PRINCIPAL RESPONSIBILITY."

(m) A lawyer shall not state or imply that the lawyer will engage in conduct or tactics that would violate the Rules of Professional Conduct or court rule.

(n) A communication may include a testimonial, subject to the following: (1) the person giving the testimonial about a lawyer or firm must have personal, real and direct legal experience with the lawyer or firm and must have a legitimate basis for what is said; and (2) if the

person giving the testimonial has been compensated or given or promised anything of value for giving the testimonial, that fact must be disclosed plainly and prominently.

The lawyer on whose behalf the testimonial is made is responsible for ensuring that the testimonial is accurate and not misleading. Any materially false or misleading statement by the person giving the testimonial constitutes a violation of these Rules by the lawyer.

(o) If a communication includes a result achieved by a lawyer in a matter, the result must be accompanied by a description of the type of case or matter, be objectively verifiable, and the result must be described or presented in a manner that is not misleading. A communication about a result achieved by a lawyer in a matter is misleading if it would probably cause a reasonable person to form an unjustified expectation that the same or similar result probably would be obtained for other clients, or if the communication would probably cause a reasonable person to misunderstand the nature or significance of the result.

(p) A communication containing a result must state the following clearly and prominently: **“EVERY CASE IS DIFFERENT, AND THIS RESULT DOES NOT GUARANTEE THAT THE SAME RESULT WOULD BE OBTAINED IN ANOTHER CASE.”**

(q) Communications which include a dramatization or depiction of an actual event, or a fictitious event which a reasonable prospective client would not understand was fictitious, must state clearly and prominently: **“DRAMATIZATION -- NOT (THE) (AN) ACTUAL EVENT.”**

(r) A lawyer shall not use an authority figure, such as a judge or law enforcement officer, or an actor portraying an authority figure, to endorse or recommend the lawyer or act as a spokesman for or give a testimonial about the lawyer.

(s) A lawyer shall not use an actor or model to portray a client of the lawyer, unless the client portrayal is non-speaking and merely background. A lawyer shall not use an actor to portray a lawyer whose services are being described or promoted.

(t) In any communication by a lawyer purporting to give the public legal advice or information which is not an obvious advertisement, for which the broadcaster or other provider of the platform for the communication receives any remuneration or other consideration, directly or indirectly, from or on behalf of the lawyer making the communication, the lawyer shall clearly disclose during the communication that (1) the lawyer has paid the broadcaster or other platform provider, and (2) the communication is an advertisement. For an audio-visual communication, such as television or the internet, this disclosure must be given orally if the communication includes spoken words, and also in writing at the start of the communication and immediately after any commercial or other interruption. For any radio or other audio presentation, the disclosure must be spoken at the beginning of the communication and after any commercial or other interruption. Call-in television or radio programs, question and answer presentations, interviews, and “infomercials” are examples of the type of communication requiring this disclosure. The disclosure is not required for social media posts for which the lawyer does not pay the platform provider directly or through third parties.

(u) A lawyer shall not manipulate or purchase internet search results so as to cause a reasonable prospective client mistakenly to contact the lawyer who manipulated or purchased the search results rather than the lawyer or firm for whom the prospective client searched.

(v) This Rule does not apply to a communication by or on behalf of a lawyer licensed or admitted in Alabama and aired or disseminated in a jurisdiction other than Alabama if (1) the Alabama lawyer is admitted in the other jurisdiction, (2) the communication complies with

the appropriate rules of that jurisdiction, and (3) the communication reasonably is not expected to reach Alabama residents.

(w) Lawyer and law firm websites, social media pages, professional networking websites, etc., are subject to these Rules. A disclosure, disclaimer or other statement required by these Rules shall be placed with the information to which the disclosure, disclaimer or statement applies. Short-form communications such as banner ads do not violate these Rules if the required disclosure is on the first page that appears when the banner ad, etc., is clicked or selected.

(x) Characterizations or depictions of or statements about opposing parties in current or potential litigation must be truthful and not misleading.

(y) Unless covered by an exception, this Rule applies to all forms of communication seeking or offering legal employment.

Comments

“Lawyer” includes the lawyer’s firm.

Under Rule 8.5, this Rule applies to any lawyer who communicates with prospective clients in Alabama about the lawyer’s legal services, even if neither the lawyer nor the members of the lawyer’s firm are licensed in or admitted to practice in Alabama.

Rule 7.2 no longer requires the use of a general disclaimer for all communications which are subject to the Rule. Rule 7.2 requires specific disclosures and disclaimers for certain types of covered communications.

A “prospective client” is someone whom the lawyer considers a potential client, or someone whom the lawyer actively seeks to represent if given the opportunity. As an example, individuals who watch or hear

a lawyer's commercial or view a billboard or access a lawyer's website are prospective clients in most instances.

A communication to prospective clients by a lawyer who does not intend to render the professional services described or indicated in the communication is misleading if the communication would cause a reasonable person to believe that the lawyer making the communication, or a member of his or her firm, would represent clients in court or otherwise personally handle the referenced matters for clients, unless the disclosure required by Rule 7.2(l) is included in the communication.

The retention, disclaimer and disclosure requirements of Rule 7.2 do not apply to communications that are not motivated by pecuniary gain and contain no representations about the lawyer and do not seek or offer legal employment, and do not apply to sponsorships or donations that are made in the name of the lawyer and contain no representations about the lawyer and do not seek or offer legal employment.

The retention, disclosure and disclaimer requirements of Rule 7.2 do not apply to lawyer communications required by law, such as notice during litigation to members or potential members of a judicially-defined class.

A client review of a lawyer or testimonial about a lawyer which the lawyer has not requested, arranged or provided input for and cannot control generally is not subject to the requirements of this Rule. A client review or testimonial on a lawyer's website or in other media, which reasonably can be deleted or removed by the lawyer, must comply with Rule 7.2 and the lawyer is responsible for its content.

Communications about fees and other charges about a lawyer's services shall be clear, accurate and not misleading. For example, if the client will be responsible for any costs even if there is no recovery, the communication, "*You pay nothing unless we win,*" would be misleading.

It is not required that a communication to prospective clients concerning fees and expenses contain the details that would be in a fee contract with a client, but the communication shall not suggest or indicate a fee arrangement that is not accurate.

Language required by these Rules must be easy to see, hear and understand. Presentation of required language, including disclosures or disclaimers, in a manner that prevents the prospective client from easily seeing, hearing and understanding the information, such as rapid speech or writing that is small or difficult to read, and any other presentation that diminishes or distracts from the required information being heard, seen and understood, is prohibited by and violates these Rules.

Disclaimers, disclosures and other language required by these Rules must be able to be seen, read, or heard by a normal or typical viewer or listener of that type of communication. For billboards and signs, the language must be easily seen from the typical viewer's perspective—for example, in a vehicle traveling at speed on a road or highway. In an audiovisual format, the written language must be large and clear enough, and visible long enough, for a typical viewer to see it without straining, and to understand it.

“Objectively verifiable” means able to be proven or substantiated by the lawyer upon request by a prospective client or the Office of General Counsel.

“Prominently” means presented openly and in a straightforward manner and not presented in a manner that makes it more difficult for the listener or viewer to hear or see the required information than it is to hear or see the other information in the communication.

A deceptive or inherently misleading communication includes but is not limited to a communication that references a former or retired judicial, executive, or legislative branch official currently engaged in the practice of law by a judicial, executive, or legislative branch title, unless

the title is placed after the person's name and the communication includes language that makes clear that the title was in the past and is not current or active. For example, a former judge may not state "*Judge Doe (retired)*" or "*Judge Doe, circuit judge.*" She may state "*Jane Doe, former circuit judge*" or "*Jane Doe, retired circuit judge ...*".

Communication of a case or matter result, including a verdict or settlement, may be misleading even if accurate if it fails to include information about the result that would be necessary for a reasonable person to understand and evaluate the result or if the communication would cause a reasonable person to reach a conclusion about the nature or significance of the result, or the role of the lawyer in obtaining the result, that is materially different than the truth.

A communication about cumulative case or matter results, such as the total amount of money recovered or obtained for clients or total amounts of verdicts or settlements, must comply with the requirements of this Rule as to each individual result contained or included in the cumulative results.

Communications of a past result achieved by a lawyer may be misleading if, for example, (1) someone other than the lawyer or the lawyer's firm actually achieved the result, (2) the lawyer did not make a legitimate and significant contribution to obtaining the result, (3) the result was a verdict that was not collected, (4) the result was a default judgment, (5) the matter was not contested, (6) the verdict or other result was overturned or reduced on appeal, (7) the result was outside Alabama, etc., and that additional information is not disclosed.

Rule 1.6 (Confidentiality of Information) applies to lawyer and law firm communications, including those addressed in this Rule. Nothing in this Rule authorizes or allows a lawyer to disclose a client's confidential information without the client's consent.

A communication presented as a “*medical alert*,” “*health alert*,” “*public service announcement*” or similar description is false and misleading and is prohibited.

A communication which suggests or implies that those to whom the communication is directed should not follow medical advice they have received or should not seek or continue medical treatment recommended by a healthcare provider is prohibited.

Whether a lawyer causing his or her information to result from a keyword internet search for a different lawyer is a violation of these Rules depends on the circumstances. If the communication about the lawyer who is causing his or her information to result from a keyword internet search for a different lawyer is not clearly and prominently labeled or described as an advertisement, or would cause a reasonable person to believe that the lawyer is the same lawyer the person had searched for, or would cause the person mistakenly to contact the lawyer instead of the lawyer searched for, the practice is misleading and violates these Rules.

Lawyers and law firms shall not advertise or practice under a trade name that is false or misleading.

This Rule applies to a press release that is provided to media outlets by a lawyer or law firm, unless (1) the press release is provided to legitimate media outlets that have editorial control, including discretion whether to print any information in the press release, (2) the media outlet is not paid to print information from the press release, and (3) the press release is not a solicitation of clients or for legal employment.

This Rule applies to an announcement of and an invitation to attend a seminar, presentation, talk or similar event sponsored by a lawyer, if the announcement or invitation is for or to an event at which the lawyer will offer or seek legal employment or at which the lawyer’s services will be promoted. Any disclosure, disclaimer or other statement

required by these Rules must be included in the invitation or announcement. The appropriate disclosure, disclaimer, etc., also is required at the event itself.

A communication about a lawyer providing mediation or arbitration services that provides no information about the lawyer's legal services or qualifications other than that the mediator or arbitrator is a lawyer or member of the Alabama State Bar is not subject to the disclaimer and retention requirements of these Rules. Mediators and arbitrators should contact the Alabama Center for Dispute Resolution for guidance concerning specific rules and advisory ethics opinions which apply to communications by or about mediators and arbitrators.

A lawyer's scholarly article, blog or other strictly educational communication is not subject to the disclosure and retention requirements of this Rule if it does not offer or seek legal employment.

A lawyer's column or article for a newspaper, website or other media which does not offer or seek legal employment is not subject to this Rule's disclosure and retention requirements.

A communication by a lawyer for politicians or political causes that does not offer or seek legal employment is not subject to this Rule. A communication by a lawyer running for political office is not subject to this Rule if it relates to the campaign and does not offer or seek legal employment.

This Rule does not apply to a communication to solicit a birth mother placed by an attorney on behalf of an existing adoption client.

Generally, promotional items such as shirts, pens, coffee mugs, etc., which contain only the lawyer's logo, name and contact information, are not subject to this Rule. Likewise, a sponsorship or acknowledgement of the lawyer which references only the lawyer's name and contact

information and does not offer or seek legal employment is not subject to this Rule.

It is false or misleading to indicate that a lawyer is based in a place where the lawyer does not normally practice or where the lawyer does not have a *bona fide* office.

A recognition, award, designation, accolade, etc., referenced in a communication covered by this Rule and not prohibited by Rule 7.1(d) must be presented in a way that would not cause a prospective client to misunderstand the true, actual significance of the recognition, etc. Indicating or implying that the recognition, etc., has more significance, is more exclusive, or denotes more skill or achievement than is accurate given the actual, true basis or criteria for receiving the recognition, etc., violates these Rules and is prohibited.

Factors determining whether a law firm or lawyer location in a lawyer communication is a *bona fide* office include whether (1) the office has the firm's or lawyer's name on an outside office sign or the building's directory; (2) the location is staffed by employees of the lawyer who answer phone calls from or assist with in-person appointments with prospective clients at that location; (3) the location is staffed by one or more receptionist, secretary, clerk, or paralegal employed by the lawyer on a full-time basis; (4) attorneys furnish legal services from the location in addition to client interviews and conferences; and (5) the location is staffed by at least one firm lawyer on a regular and continuing basis. A *bona fide* office may be a home office or co-working or shared office space owned by third parties provided the lawyer's principal residence is in Alabama.

The following are non-exhaustive examples of statements by a lawyer that may violate the Rule prohibiting predictions or guarantees of success or a specific result: "*I will save your home,*" "*I will get you money for your injuries,*" and "*Come to me and get acquitted of the charges pending against you.*" Statements to the effect that the lawyer or law firm

will work to protect the client's rights, protect the client's assets or family, and do not promise a specific legal result in a particular matter may be in compliance with this Rule.

An aspirational statement by a lawyer generally is permissible, such as a statement describing goals for a client that a lawyer or law firm will try to meet. For example, aspirational words such "*goal*," "*strive*," "*dedicated*," "*mission*," and "*philosophy*" may be appropriate. Similarly, "*If you have been injured through no fault of your own, I am dedicated to the recovery of damages on your behalf*" normally would be permissible.

A general statement by a lawyer describing or discussing a particular law or area of law that is not a promise of a specific legal result or a prediction of success is allowed. For example, "*When the government takes your property through its eminent domain power, the government must provide you with reasonable compensation for your property*," normally would be permissible.

A statement in a communication covered by these Rules to the effect that, for example, a lawyer is the "*best*" or "*most experienced*" or is "*number one*" or "*most successful*" that cannot be objectively verified or substantiated would violate these Rules.

With short-form electronic/digital lawyer communications, such as banner ads, Twitter posts, certain other social media posts, etc., disclosures, disclaimers and other statements required by these Rules may be placed on a link in the communication, as long as the link with the required information is accessible by a prospective client with one click or keystroke and the disclosure, disclaimer and other required information are in the first link in the communication available to the prospective client.

Lawyers are required to know and are assumed to know the content and manner of delivery of any communication by or for the lawyer which is subject to this Rule. Ignorance of or misunderstanding how the

communication was used or disseminated or what was in the communication does not absolve the lawyer of responsibility for the communication.

As used in these Rules, disclaimers are a type of disclosure, and the word disclosures includes disclaimers.

It is not required under Rule 7.2(e) that a communication state that each lawyer featured or identified in the communication is responsible for or has reviewed or approved the communication. This Rule does impose, however, on each lawyer identified or featured in the communication responsibility for the communication and responsibility for ensuring that the communication complies with and does not violate these Rules. A communication which does not include the name and location of a lawyer who takes responsibility for the communication violates these Rules.

A communication containing the disclosures and disclaimers required by these Rules can still be false or misleading. The communication will be considered in its entirety in determining whether it complies with these Rules.

A lawyer may not use internet “cookies” or otherwise electronically obtain information about a potential client who views a lawyer’s website or other internet or digital presence unless the lawyer discloses to the potential client that the client’s information is being accessed and the potential client consents.

Whether “retargeting” of potential clients, or directly contacting potential clients who visit a lawyer’s website or other internet site without a request to do so from the potential client, is a violation of these Rules depends on the circumstances, and any such communication is subject to these Rules.

Alabama Rules of Professional Conduct

Information About Legal Services

Rule 7.3.

Solicitation of Clients.

(a) A lawyer shall not solicit professional employment through live, in person or real-time communication directed to someone who has not asked the lawyer to contact that person and who the lawyer knows or reasonably should know needs legal services in a matter where a motive for the lawyer contacting the prospective client is the lawyer's pecuniary gain. Such communications, regardless of form, constitute improper solicitation and are subject to these Rules. Communications to another lawyer, former or current client or family member are exceptions to this Rule and are permitted.

(b) A lawyer shall not solicit professional employment, even when not prohibited in 7.3(a), if:

- (1) The communication concerns an action for personal injury or wrongful death arising out of or otherwise related to an accident, event or disaster involving the person to whom the communication is addressed, or a relative or representative of that person, unless the accident, event or disaster giving rise to the cause of action occurred more than twenty-one (21) days prior to the communication;
- (2) The communication is not covered by Rule 7.3(e) and concerns a civil proceeding pending in a state or federal court or an administrative proceeding, unless service of process was obtained on the person involved in the

proceeding or other potential client and filed with the appropriate court;

- (3) The communication concerns a criminal proceeding pending in a state or federal court, unless the prospective client was served with a warrant or information more than seven (7) days prior to the communication;
- (4) The communication concerns a specific matter, and the lawyer knows or reasonably should know that the person to whom the communication is sent or directed is represented by a lawyer in that matter;
- (5) It has been made known to the lawyer that the person to whom the communication is sent or directed does not want to receive the communication;
- (6) The communication involves coercion, duress, fraud, overreaching, harassment, intimidation, or undue influence by the lawyer;
- (7) The communication contains a false, fraudulent, misleading, deceptive, or unfair statement or claim or is otherwise improper under these Rules; or
- (8) The lawyer knows or reasonably should know that the person to whom the communication is sent or directed is a minor, is incompetent, or that the person's physical, emotional, or mental state makes it unlikely that the person would exercise reasonable judgment in employing a lawyer.

(c) A lawyer shall not permit any person, including intermediaries, representatives, employees, staff or agents of the lawyer, to solicit clients on the lawyer's behalf in violation of these

Rules, and the lawyer is responsible for any improper solicitation by the lawyer's or the lawyer's firm's intermediaries, representatives, employees, staff or agents. A lawyer shall not use any person, including intermediaries, non-lawyers, accountants, investigators, police officers, healthcare workers, courthouse personnel, etc., to solicit, seek or obtain prospective clients for the lawyer or direct clients to the lawyer in violation of these Rules.

(d) A lawyer shall not enter into an agreement for or charge or collect a fee or other compensation for professional employment obtained in violation of Rule 7.3.

(e) Communications covered by Rule 7.3(b) by or on behalf of a lawyer to prospective clients which are not prohibited by these Rules are subject to the following additional requirements:

- (1) A sample of each communication and a sample of any envelope used with any mailed communication, along with a list of names and addresses of the recipients, shall be retained by the lawyer for six (6) years and made available promptly on request to the Office of General Counsel of the Alabama State Bar. If the communication is sent to multiple recipients and it is not reasonably possible for the lawyer to identify specific addresses for the recipients, the lawyer must retain a record sufficient to identify the recipients by group.
- (2) Communications mailed to prospective clients shall not be sent by registered mail, any other form of restricted delivery, express mail, or by any other means that could reasonably mislead the recipient;

- (3) It shall not be stated or implied that the communication is approved by the Alabama State Bar or other authority;
- (4) The communication shall not resemble a legal pleading, official government form or document (administrative, municipal, federal or state), or other legal document, and the design of the communication and manner of delivering the communication shall not make the communication appear to be an official document;
- (5) If a contract for representation accompanies the communication, it must be presented as a sample contract and the top of each page of the contract shall be plainly and conspicuously marked "SAMPLE ONLY". The words "SAMPLE ONLY" shall be in bold ink in a color that contrasts with the background color and in a type size larger than the largest type used in the contract. The words "DO NOT SIGN" shall appear on the client signature line in bold ink in a color that contrasts with the background color and in a type size larger than the largest type used in the contract;
- (6) The first sentence of the communication shall state clearly and prominently: "IF YOU ALREADY HAVE A LAWYER FOR THIS MATTER, PLEASE DISREGARD THIS COMMUNICATION.";
- (7) If the communication is prompted by or is about a specific occurrence (e.g., accident, bankruptcy, divorce, death, arrest, recorded judgment, garnishment), the communication shall disclose, in easily understandable language, how the lawyer obtained that information;

- (8) A communication to a prospective client seeking employment in a specific matter shall not reveal on the envelope, or on the outside of the self-mailing brochure or pamphlet, the nature of the prospective client's legal problem or situation;
- (9) The lawyer sending or making the communication must be able to demonstrate promptly on request by a prospective client or by the Office of General Counsel of the Alabama State Bar that all of the information contained in the communication is truthful and is not misleading; and
- (10) If the matter referenced in the communication probably will be referred to another lawyer or another law firm, the communication must say that in clear, plain language.

(f) A non-electronically transmitted communication subject to this Rule shall be plainly marked "ADVERTISEMENT" both on the top of its first page and on the face of the envelope or other packaging used to transmit the communication. The word "ADVERTISEMENT" must be in bold print larger than the largest print in the communication and in a color that contrasts with the background color.

(g) An email or other electronically transmitted direct communication subject to the requirements of this Rule must be clearly and prominently designated "ADVERTISEMENT" in the subject portion of the communication and at the beginning of the communication's text in print larger than the largest print in the communication.

(h) An audio or video communication, internet or social media communication, email communication, or a recorded telephone message subject to the requirements of this Rule must clearly and prominently disclose that it is an "ADVERTISEMENT" at the beginning of the

communication before any other writing or any other words being spoken.

(i) The first sentence of a targeted direct mail or email solicitation permitted under these Rules must be “ADVERTISEMENT. IF YOU HAVE ALREADY RETAINED A LAWYER FOR THIS MATTER, PLEASE DISREGARD THIS COMMUNICATION” presented clearly and prominently in print larger than the largest print in the communication.

Comments

A prospective client as used in these Rules is someone whom the lawyer considers a potential client, or someone whom the lawyer seeks to represent if given the opportunity. As an example, individuals who watch or hear a lawyer’s commercial or view a billboard or access a lawyer’s website are prospective clients in most instances.

Under Rule 8.5, this Rule applies to any lawyer or firm who solicits clients in Alabama, even if neither the lawyer nor the members of the lawyer’s firm are admitted to practice in Alabama.

“Solicitation” and “solicit” means a communication from or on behalf of a lawyer or law firm that is directed to a specific person the lawyer knows or reasonably should know probably needs legal services in a particular matter and that offers to provide, or reasonably would be understood as offering to provide, legal services for that matter. General communications, such as billboards, television or radio advertisements, web pages, banner ads, social media posts, blogs, and similar forms of communications which are not directed to a specific individual with a particular legal matter are not considered solicitation under these Rules.

Rule 7.3 does not apply if a potential client initiates contact with the lawyer without any solicitation by the lawyer or by an agent, representative or other intermediary of the lawyer. A lawyer's communication does not constitute solicitation under Rule 7.3 if it is in response to a request for information by a potential client that itself was not the result of any solicitation by the lawyer or by an agent or representative or other intermediary of the lawyer, or if the communication was automatically generated in response to an internet search.

As used in this Rule, "lawyer" includes the lawyer's firm.

Even permitted forms of solicitation can violate these Rules if the solicitation contains false or misleading information.

There is a potential for abuse inherent in live, person-to-person, direct or real-time solicitation by a lawyer of a prospective client known to need legal services. These forms of solicitation subject the prospective client to the private importuning of a trained advocate, in a direct interpersonal encounter. A prospective client often feels overwhelmed by the situation giving rise to the need for legal services and may have an impaired capacity for reason, judgment, and protective self-interest. Furthermore, the lawyer seeking to be retained is faced with a conflict stemming from the lawyer's own interest, which may color the advice and representation offered the vulnerable prospective client.

The situation is fraught with the possibility of undue influence, intimidation, and overreaching. This potential for abuse inherent in direct solicitation of a prospective client justifies some restrictions, particularly since the communications permitted under Rule 7.2 offer an alternative means of communicating necessary information to a person who may be in need of legal services. Advertising makes it possible for a prospective client to be informed about the need for legal services, and about the qualifications of available lawyers and law

firms, without subjecting the prospective client to direct personal persuasion that may impair or overwhelm the client's judgment.

Communications by a lawyer seeking employment by a prospective client that are not real time or in person generally present less potential for abuse or overreaching than in-person real-time solicitation and are therefore not prohibited for most types of legal matters, but are subject to reasonable restrictions, as set forth in these Rules, designed to minimize or preclude abuse and overreaching and to ensure the lawyer's accountability if abuse should occur. Email communications, for example, are not real-time, person-to-person communications prohibited under Rule 7.3(a), but they still are subject to the other provisions and requirements of these Rules. Communications with potential clients who initiate the contact by using the chat box or other interactive feature of a lawyer's website also would not be prohibited solicitation if the communication complies with the other applicable provisions and requirements of these Rules. In contrast, text communications initiated by or for the lawyer are real-time, person-to-person solicitations and are prohibited under Rule 7.3(a).

This Rule allows targeted mail solicitation of potential clients in personal injury and wrongful death causes of action or other causes of action that relate to an accident, disaster, death, or injury, subject to the requirements of these Rules, but only if the communication is not made until twenty-one (21) days after the incident. This restriction is reasonably required by the sensitized state of the potential client, who may be either injured or grieving over the loss of a family member, and by the abuses that experience has shown can exist in this type of solicitation.

This Rule prohibits a lawyer from interfering, or allowing another person to interfere, with another lawyer's current attorney-client relationship in a matter. It is prohibited for a lawyer to obtain legal

employment by attempting to convince or persuade the client of a different lawyer in a matter to hire him or her in that same matter or to terminate the client's relationship with the client's current lawyer in that matter, or for the lawyer to allow any other person to do so. This Rule does not prevent a lawyer from seeking future legal work from a client of another lawyer.

This Rule would not prohibit a lawyer from contacting representatives of organizations or groups that may be interested in establishing a group or prepaid legal plan for its 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 that the lawyer or the law firm is willing to offer. This form of communication is not directed to a specific prospective client known to need legal services related to a particular matter. 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 the communications permitted under Rule 7.2.

This Rule does not prohibit communications ordered by a court or by other official tribunal recognized by the Office of General Counsel of the Alabama State Bar.

This Rule does not prohibit a lawyer from referring clients to another lawyer or a non-lawyer professional pursuant to a reciprocal referral agreement if the agreement is not exclusive, the client is fully informed in writing of the existence and nature of the agreement prior to the referral and agrees to the referral, and the referral does not otherwise violate these Rules.

A targeted or direct mail communication is one that is prompted by a specific occurrence. Direct mail or email advertisements sent out generally to the public, such as bulk mailers to a specific zip code, are not targeted communications unless the lawyer knows the recipient(s) has or have a specific legal problem.

Disclosures under 7.3(e)(7) must be reasonably specific. Some non-exhaustive examples: If a lawyer obtained a prospective client's name from a police accident report, any solicitation permitted by these Rules should state that the name was obtained from a "police accident report", rather than a general reference to "public records." If a prospective client's name is obtained from a jail inmate's list or booking log, that should be stated in the communication. If the prospective client's name was obtained from a foreclosure list in a specific newspaper, the appropriate language should state that the lawyer obtained the name from "foreclosure list in [name of newspaper]".

Lawyers are required to know and are assumed to know the content and manner of delivery of any communication by or for the lawyer which is subject to this Rule. Ignorance of or misunderstanding of how the communication was used or disseminated or what was in the communication does not absolve the lawyer of responsibility for the communication.

"Prominently" as used in these Rules means not hidden and not presented in a manner that makes it more difficult for the listener or viewer to hear or see the required information than it is to hear or see the other information in the communication.