

ADOPTED**RESOLUTION**

1 RESOLVED, That the American Bar Association amends the ABA Model Rules of Professional
2 Conduct dated August 2012, to provide guidance regarding lawyers' use of technology and client
3 development as follows (insertions underlined, deletions ~~struck through~~):
4

- 5 (a) the black letter and Comments to Model Rule 1.18 (Duties to Prospective Client);
6 (b) the Comments to Model Rule 7.1 (Communications Concerning a Lawyer's Services);
7 (c) the Comments to Model Rule 7.2 (Advertising);
8 (d) the title, black letter, and Comments to Model Rule 7.3 (Direct Contact with Prospective
9 Clients); and
10 (e) the Comments to Model Rule 5.5 (Unauthorized Practice of Law; Multijurisdictional Practice
11 of Law).
12

Rule 1.18: Duties to Prospective Client

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15 (a) A person who ~~discusses~~ consults with a lawyer about the possibility of forming a
16 client-lawyer relationship with respect to a matter is a prospective client.

17 (b) Even when no client-lawyer relationship ensues, a lawyer who has ~~had~~
18 ~~discussions with~~ learned information from a prospective client shall not use or reveal that
19 ~~information learned in the consultation~~, except as Rule 1.9 would permit with respect to
20 information of a former client.

21 (c) A lawyer subject to paragraph (b) shall not represent a client with interests
22 materially adverse to those of a prospective client in the same or a substantially related
23 matter if the lawyer received information from the prospective client that could be
24 significantly harmful to that person in the matter, except as provided in paragraph (d). If a
25 lawyer is disqualified from representation under this paragraph, no lawyer in a firm with
26 which that lawyer is associated may knowingly undertake or continue representation in
27 such a matter, except as provided in paragraph (d).

28 (d) When the lawyer has received disqualifying information as defined in paragraph
29 (c), representation is permissible if:

- 30 (1) both the affected client and the prospective client have given informed
31 consent, confirmed in writing, or:

105B

32 (2) the lawyer who received the information took reasonable measures to
33 avoid exposure to more disqualifying information than was reasonably necessary to
34 determine whether to represent the prospective client; and

35 (i) the disqualified lawyer is timely screened from any participation in
36 the matter and is apportioned no part of the fee therefrom; and

37 (ii) written notice is promptly given to the prospective client.
38

39 Comment

40 [1] Prospective clients, like clients, may disclose information to a lawyer, place
41 documents or other property in the lawyer's custody, or rely on the lawyer's advice. A lawyer's
42 ~~discussions~~ consultations with a prospective client usually are limited in time and depth and
43 leave both the prospective client and the lawyer free (and sometimes required) to proceed no
44 further. Hence, prospective clients should receive some but not all of the protection afforded
45 clients.

46 [2] ~~Not all persons who communicate information to a lawyer are entitled to~~
47 ~~protection under this Rule. A person becomes a prospective client by consulting with a lawyer~~
48 ~~about the possibility of forming a client-lawyer relationship with respect to a matter. Whether~~
49 ~~communications, including written, oral, or electronic communications, constitute a consultation~~
50 ~~depends on the circumstances. For example, a consultation is likely to have occurred if a lawyer,~~
51 ~~either in person or through the lawyer's advertising in any medium, specifically requests or~~
52 ~~invites the submission of information about a potential representation without clear and~~
53 ~~reasonably understandable warnings and cautionary statements that limit the lawyer's~~
54 ~~obligations, and a person provides information in response. See also Comment [4]. In contrast, a~~
55 ~~consultation does not occur if a person provides information to a lawyer in response to~~
56 ~~advertising that merely describes the lawyer's education, experience, areas of practice, and~~
57 ~~contact information, or provides legal information of general interest. A person who~~
58 ~~communicates~~ Such a person communicates information unilaterally to a lawyer, without any
59 reasonable expectation that the lawyer is willing to discuss the possibility of forming a client-
60 lawyer relationship, and is thus not a "prospective client," ~~within the meaning of paragraph (a).~~
61 Moreover, a person who communicates with a lawyer for the purpose of disqualifying the lawyer
62 is not a "prospective client."

63 ...

64 [4] In order to avoid acquiring disqualifying information from a prospective client, a
65 lawyer considering whether or not to undertake a new matter should limit ~~the initial interview~~ the
66 initial consultation to only such information as reasonably appears necessary for that purpose.
67 Where the information indicates that a conflict of interest or other reason for non-representation
68 exists, the lawyer should so inform the prospective client or decline the representation. If the
69 prospective client wishes to retain the lawyer, and if consent is possible under Rule 1.7, then
70 consent from all affected present or former clients must be obtained before accepting the
71 representation.

72 [5] A lawyer may condition ~~conversations~~ a consultation with a prospective client on the

73 person's informed consent that no information disclosed during the consultation will prohibit the
 74 lawyer from representing a different client in the matter. See Rule 1.0(e) for the definition of
 75 informed consent. If the agreement expressly so provides, the prospective client may also
 76 consent to the lawyer's subsequent use of information received from the prospective client.

77 ...

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79 **Rule 7.1 Communications Concerning a Lawyer's Services**

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81 **A lawyer shall not make a false or misleading communication about the lawyer or the**
 82 **lawyer's services. A communication is false or misleading if it contains a material**
 83 **misrepresentation of fact or law, or omits a fact necessary to make the statement**
 84 **considered as a whole not materially misleading.**

85

86 **COMMENT**

87 ...

88 [3] An advertisement that truthfully reports a lawyer's achievements on behalf of clients
 89 or former clients may be misleading if presented so as to lead a reasonable person to form an
 90 unjustified expectation that the same results could be obtained for other clients in similar matters
 91 without reference to the specific factual and legal circumstances of each client's case. Similarly,
 92 an unsubstantiated comparison of the lawyer's services or fees with the services or fees of other
 93 lawyers may be misleading if presented with such specificity as would lead a reasonable person
 94 to conclude that the comparison can be substantiated. The inclusion of an appropriate disclaimer
 95 or qualifying language may preclude a finding that a statement is likely to create unjustified
 96 expectations or otherwise mislead the public. ~~a prospective client.~~

97 ...

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99 **Rule 7.2 Advertising**

100

101 **(a) Subject to the requirements of Rules 7.1 and 7.3, a lawyer may advertise services**
 102 **through written, recorded or electronic communication, including public media.**

103 **(b) A lawyer shall not give anything of value to a person for recommending the lawyer's**
 104 **services except that a lawyer may**

105 **(1) pay the reasonable costs of advertisements or communications permitted by this**
 106 **Rule;**

107 **(2) pay the usual charges of a legal services plan or a not-for-profit or qualified**
 108 **lawyer referral service. A qualified lawyer referral service is a lawyer referral**
 109 **service that has been approved by an appropriate regulatory authority;**

110 **(3) pay for a law practice in accordance with Rule 1.17; and**

111 **(4) refer clients to another lawyer or a nonlawyer professional pursuant to an**
 112 **agreement not otherwise prohibited under these Rules that provides for the other**
 113 **person to refer clients or customers to the lawyer, if**

114 **(i) the reciprocal referral agreement is not exclusive, and**

115 **(ii) the client is informed of the existence and nature of the agreement.**

116 **(c) Any communication made pursuant to this Rule shall include the name and office**
 117 **address of at least one lawyer or law firm responsible for its content.**

105B

118 **Comment**

119 [1] To assist the public in learning about and obtaining legal services, lawyers should be
120 allowed to make known their services not only through reputation but also through organized
121 information campaigns in the form of advertising. Advertising involves an active quest for
122 clients, contrary to the tradition that a lawyer should not seek clientele. However, the public's
123 need to know about legal services can be fulfilled in part through advertising. This need is
124 particularly acute in the case of persons of moderate means who have not made extensive use of
125 legal services. The interest in expanding public information about legal services ought to prevail
126 over tradition. Nevertheless, advertising by lawyers entails the risk of practices that are
127 misleading or overreaching.

128 [2] This Rule permits public dissemination of information concerning a lawyer's name or
129 firm name, address, email address, website, and telephone number; the kinds of services the
130 lawyer will undertake; the basis on which the lawyer's fees are determined, including prices for
131 specific services and payment and credit arrangements; a lawyer's foreign language ability;
132 names of references and, with their consent, names of clients regularly represented; and other
133 information that might invite the attention of those seeking legal assistance.

134 [3] Questions of effectiveness and taste in advertising are matters of speculation and
135 subjective judgment. Some jurisdictions have had extensive prohibitions against television and
136 other forms of advertising, against advertising going beyond specified facts about a lawyer, or
137 against "undignified" advertising. Television, the Internet, and other forms of electronic
138 communication are ~~is now one of~~ among the most powerful media for getting information to the
139 public, particularly persons of low and moderate income; prohibiting television, Internet, and
140 other forms of electronic advertising, therefore, would impede the flow of information about
141 legal services to many sectors of the public. Limiting the information that may be advertised has
142 a similar effect and assumes that the bar can accurately forecast the kind of information that the
143 public would regard as relevant. ~~Similarly, electronic media, such as the Internet, can be an~~
144 ~~important source of information about legal services, and lawful communication by electronic~~
145 ~~mail is permitted by this Rule.~~ But see Rule 7.3(a) for the prohibition against the a solicitation of
146 a prospective client through a real-time electronic exchange initiated by the lawyer. ~~that is not~~
147 ~~initiated by the prospective client.~~

148 ...

149 **Paying Others to Recommend a Lawyer**

150 [5] Except as permitted under paragraphs (b)(1)-(b)(4), ~~l~~lawyers are not permitted to pay
151 others for ~~channeling professional work~~ recommending the lawyer's services or for channeling
152 professional work in a manner that violates Rule 7.3. A communication contains a
153 recommendation if it endorses or vouches for a lawyer's credentials, abilities, competence,
154 character, or other professional qualities. Paragraph (b)(1), however, allows a lawyer to pay for
155 advertising and communications permitted by this Rule, including the costs of print directory
156 listings, on-line directory listings, newspaper ads, television and radio airtime, domain-name
157 registrations, sponsorship fees, ~~banner ads,~~ Internet-based advertisements, and group advertising.
158 A lawyer may compensate employees, agents and vendors who are engaged to provide marketing
159 or client development services, such as publicists, public-relations personnel, business-
160 development staff and website designers. Moreover, a lawyer may pay others for generating
161 client leads, such as Internet-based client leads, as long as the lead generator does not
162 recommend the lawyer, any payment to the lead generator is consistent with Rules 1.5(e)
163 (division of fees) and 5.4 (professional independence of the lawyer), and the lead generator's

164 communications are consistent with Rule 7.1 (communications concerning a lawyer's services).
 165 To comply with Rule 7.1, a lawyer must not pay a lead generator that states, implies, or creates a
 166 reasonable impression that it is recommending the lawyer, is making the referral without
 167 payment from the lawyer, or has analyzed a person's legal problems when determining which
 168 lawyer should receive the referral. See also Rule 5.3 for the- (duties of lawyers and law firms
 169 with respect to the conduct of nonlawyers); Rule 8.4(a) (duty to avoid violating the Rules
 170 through the acts of another). -who prepare marketing materials for them.

171 [6] A lawyer may pay the usual charges of a legal service plan or a not-for-profit or
 172 qualified lawyer referral service. A legal service plan is a prepaid or group legal service plan or a
 173 similar delivery system that assists people who seek ~~prospective clients~~ to secure legal
 174 representation. A lawyer referral service, on the other hand, is any organization that holds itself
 175 out to the public as a lawyer referral service. Such referral services are understood by ~~laypersons~~
 176 the public to be consumer-oriented organizations that provide unbiased referrals to lawyers with
 177 appropriate experience in the subject matter of the representation and afford other client
 178 protections, such as complaint procedures or malpractice insurance requirements. Consequently,
 179 this Rule only permits a lawyer to pay the usual charges of a not-for-profit or qualified lawyer
 180 referral service. A qualified lawyer referral service is one that is approved by an appropriate
 181 regulatory authority as affording adequate protections for the public. ~~prospective clients~~. See,
 182 e.g., the American Bar Association's Model Supreme Court Rules Governing Lawyer Referral
 183 Services and Model Lawyer Referral and Information Service Quality Assurance Act (requiring
 184 that organizations that are identified as lawyer referral services (i) permit the participation of all
 185 lawyers who are licensed and eligible to practice in the jurisdiction and who meet reasonable
 186 objective eligibility requirements as may be established by the referral service for the protection
 187 of the public ~~prospective clients~~; (ii) require each participating lawyer to carry reasonably
 188 adequate malpractice insurance; (iii) act reasonably to assess client satisfaction and address client
 189 complaints; and (iv) do not make referrals ~~prospective clients~~ to lawyers who own, operate or are
 190 employed by the referral service).

191 [7] A lawyer who accepts assignments or referrals from a legal service plan or referrals
 192 from a lawyer referral service must act reasonably to assure that the activities of the plan or
 193 service are compatible with the lawyer's professional obligations. See Rule 5.3. Legal service
 194 plans and lawyer referral services may communicate with ~~prospective clients~~ the public, but such
 195 communication must be in conformity with these Rules. Thus, advertising must not be false or
 196 misleading, as would be the case if the communications of a group advertising program or a
 197 group legal services plan would mislead the public ~~prospective clients~~ to think that it was a
 198 lawyer referral service sponsored by a state agency or bar association. Nor could the lawyer
 199 allow in-person, telephonic, or real-time contacts that would violate Rule 7.3.

200 ...

201

202 **Rule 7.3 ~~Direct Contact with Prospective~~ Solicitation of Clients**

203

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

207 **(1) is a lawyer; or**

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

105B

209 (b) A lawyer shall not solicit professional employment ~~from a prospective client~~ by written,
210 recorded or electronic communication or by in-person, telephone or real-time electronic
211 contact even when not otherwise prohibited by paragraph (a), if:

212 (1) the ~~prospective client~~ target of the solicitation has made known to the lawyer a
213 desire not to be solicited by the lawyer; or

214 (2) the solicitation involves coercion, duress or harassment.

215 (c) Every written, recorded or electronic communication from a lawyer soliciting
216 professional employment from anyone a ~~prospective client~~ known to be in need of legal
217 services in a particular matter shall include the words "Advertising Material" on the
218 outside envelope, if any, and at the beginning and ending of any recorded or electronic
219 communication, unless the recipient of the communication is a person specified in
220 paragraphs (a)(1) or (a)(2).

221 (d) Notwithstanding the prohibitions in paragraph (a), a lawyer may participate with a
222 prepaid or group legal service plan operated by an organization not owned or directed by
223 the lawyer that uses in-person or telephone contact to solicit memberships or subscriptions
224 for the plan from persons who are not known to need legal services in a particular matter
225 covered by the plan.

226 Comment

227 [1] A solicitation is a targeted communication initiated by the lawyer that is directed to a
228 specific person and that offers to provide, or can reasonably be understood as offering to provide,
229 legal services. In contrast, a lawyer's communication typically does not constitute a solicitation
230 if it is directed to the general public, such as through a billboard, an Internet banner
231 advertisement, a website or a television commercial, or if it is in response to a request for
232 information or is automatically generated in response to Internet searches.

233 [2] There is a potential for abuse when a solicitation involves ~~inherent in~~ direct in-
234 person, live telephone or real-time electronic contact by a lawyer with someone a ~~prospective~~
235 ~~client~~ known to need legal services. These forms of contact ~~between a lawyer and a prospective~~
236 ~~client~~ subject ~~the layperson~~ a person to the private importuning of the trained advocate in a direct
237 interpersonal encounter. The person ~~prospective client~~, who may already feel overwhelmed by
238 the circumstances giving rise to the need for legal services, may find it difficult fully to evaluate
239 all available alternatives with reasoned judgment and appropriate self-interest in the face of the
240 lawyer's presence and insistence upon being retained immediately. The situation is fraught with
241 the possibility of undue influence, intimidation, and over-reaching.

242 [3] This potential for abuse inherent in direct in-person, live telephone or real-time
243 electronic solicitation ~~of prospective clients~~ justifies its prohibition, particularly since lawyers
244 ~~have advertising and written and recorded communication permitted under Rule 7.2~~ offer
245 alternative means of conveying necessary information to those who may be in need of legal
246 services. ~~Advertising and written and recorded~~ In particular, communications, can ~~which may be~~
247 ~~be mailed or auto dialed or transmitted by email or other electronic means that do not involve~~
248 ~~real-time contact and do not violate other laws governing solicitations.~~ These forms of
249 communications and solicitations make it possible for the public a ~~prospective client~~ to be
250 informed about the need for legal services, and about the qualifications of available lawyers and
251 law firms, without subjecting ~~the prospective client~~ the public to direct in-person, telephone or
252 real-time electronic persuasion that may overwhelm ~~the client's~~ a person's judgment.

254 [34] The use of general advertising and written, recorded or electronic communications to
255 transmit information from lawyer to the public ~~prospective client~~, rather than direct in-person,
256 live telephone or real-time electronic contact, will help to assure that the information flows
257 cleanly as well as freely. The contents of advertisements and communications permitted under
258 Rule 7.2 can be permanently recorded so that they cannot be disputed and may be shared with
259 others who know the lawyer. This potential for informal review is itself likely to help guard
260 against statements and claims that might constitute false and misleading communications, in
261 violation of Rule 7.1. The contents of direct-in-person, live telephone or real-time electronic
262 ~~conversations between a lawyer and a prospective client~~ contact can be disputed and may not be
263 subject to third-party scrutiny. Consequently, they are much more likely to approach (and
264 occasionally cross) the dividing line between accurate representations and those that are false
265 and misleading.

266 [45] There is far less likelihood that a lawyer would engage in abusive practices against
267 ~~an individual who is~~ a former client, or a person with whom the lawyer has close personal or
268 family relationship, or in situations in which the lawyer is motivated by considerations other than
269 the lawyer's pecuniary gain. Nor is there a serious potential for abuse when the person contacted
270 is a lawyer. Consequently, the general prohibition in Rule 7.3(a) and the requirements of Rule
271 7.3(c) are not applicable in those situations. Also, paragraph (a) is not intended to prohibit a
272 lawyer from participating in constitutionally protected activities of public or charitable legal-
273 service organizations or bona fide political, social, civic, fraternal, employee or trade
274 organizations whose purposes include providing or recommending legal services to ~~its~~ their
275 members or beneficiaries.

276 [56] But even permitted forms of solicitation can be abused. Thus, any solicitation which
277 contains information which is false or misleading within the meaning of Rule 7.1, which
278 involves coercion, duress or harassment within the meaning of Rule 7.3(b)(2), or which involves
279 contact with ~~a prospective client~~ someone who has made known to the lawyer a desire not to be
280 solicited by the lawyer within the meaning of Rule 7.3(b)(1) is prohibited. Moreover, if after
281 sending a letter or other communication ~~to a client~~ as permitted by Rule 7.2 the lawyer receives
282 no response, any further effort to communicate with the recipient of the communication
283 ~~prospective client~~ may violate the provisions of Rule 7.3(b).

284 [67] This Rule is not intended to prohibit a lawyer from contacting representatives of
285 organizations or groups that may be interested in establishing a group or prepaid legal plan for
286 their members, insureds, beneficiaries or other third parties for the purpose of informing such
287 entities of the availability of and details concerning the plan or arrangement which the lawyer or
288 lawyer's firm is willing to offer. This form of communication is not directed to people who are
289 seeking legal services for themselves, ~~a prospective client~~. Rather, it is usually addressed to an
290 individual acting in a fiduciary capacity seeking a supplier of legal services for others who may,
291 if they choose, become prospective clients of the lawyer. Under these circumstances, the activity
292 which the lawyer undertakes in communicating with such representatives and the type of
293 information transmitted to the individual are functionally similar to and serve the same purpose
294 as advertising permitted under Rule 7.2.

295 [78] The requirement in Rule 7.3(c) that certain communications be marked "Advertising
296 Material" does not apply to communications sent in response to requests of potential clients or
297 their spokespersons or sponsors. General announcements by lawyers, including changes in
298 personnel or office location, do not constitute communications soliciting professional
299 employment from a client known to be in need of legal services within the meaning of this Rule.

105B

300 [89] Paragraph (d) of this Rule permits a lawyer to participate with an organization which
301 uses personal contact to solicit members for its group or prepaid legal service plan, provided that
302 the personal contact is not undertaken by any lawyer who would be a provider of legal services
303 through the plan. The organization must not be owned by or directed (whether as manager or
304 otherwise) by any lawyer or law firm that participates in the plan. For example, paragraph (d)
305 would not permit a lawyer to create an organization controlled directly or indirectly by the
306 lawyer and use the organization for the in-person or telephone solicitation of legal employment
307 of the lawyer through memberships in the plan or otherwise. The communication permitted by
308 these organizations also must not be directed to a person known to need legal services in a
309 particular matter, but is to be designed to inform potential plan members generally of another
310 means of affordable legal services. Lawyers who participate in a legal service plan must
311 reasonably assure that the plan sponsors are in compliance with Rules 7.1, 7.2 and 7.3(b). See
312 8.4(a).

313

314 **Rule 5.5 Unauthorized Practice Of Law; Multijurisdictional Practice Of Law**

315

316 **(a) A lawyer shall not practice law in a jurisdiction in violation of the regulation of the legal**
317 **profession in that jurisdiction, or assist another in doing so.**

318 **(b) A lawyer who is not admitted to practice in this jurisdiction shall not:**

319 **(1) except as authorized by these Rules or other law, establish an office or other**
320 **systematic and continuous presence in this jurisdiction for the practice of law; or**

321 **(2) hold out to the public or otherwise represent that the lawyer is admitted to**
322 **practice law in this jurisdiction.**

323 **(c) A lawyer admitted in another United States jurisdiction, and not disbarred or**
324 **suspended from practice in any jurisdiction, may provide legal services on a temporary**
325 **basis in this jurisdiction that:**

326 **(1) are undertaken in association with a lawyer who is admitted to practice in this**
327 **jurisdiction and who actively participates in the matter;**

328 **(2) are in or reasonably related to a pending or potential proceeding before a**
329 **tribunal in this or another jurisdiction, if the lawyer, or a person the lawyer is**
330 **assisting, is authorized by law or order to appear in such proceeding or reasonably**
331 **expects to be so authorized;**

332 **(3) are in or reasonably related to a pending or potential arbitration, mediation, or**
333 **other alternative dispute resolution proceeding in this or another jurisdiction, if the**
334 **services arise out of or are reasonably related to the lawyer's practice in a**
335 **jurisdiction in which the lawyer is admitted to practice and are not services for**
336 **which the forum requires pro hac vice admission; or**

337 **(4) are not within paragraphs (c)(2) or (c)(3) and arise out of or are reasonably**
338 **related to the lawyer's practice in a jurisdiction in which the lawyer is admitted to**
339 **practice.**

340 **(d) A lawyer admitted in another United States jurisdiction, and not disbarred or**
341 **suspended from practice in any jurisdiction, may provide legal services in this jurisdiction**
342 **that:**

343 **(1) are provided to the lawyer's employer or its organizational affiliates and are not**
344 **services for which the forum requires pro hac vice admission; or**

345 (2) are services that the lawyer is authorized to provide by federal law or other law
346 of this jurisdiction.
347

348 **Comment**

349 ...

350 [21] Paragraphs (c) and (d) do not authorize communications advertising legal services to
351 ~~prospective clients~~ in this jurisdiction by lawyers who are admitted to practice in other
352 jurisdictions. Whether and how lawyers may communicate the availability of their services to
353 ~~prospective clients~~ in this jurisdiction is governed by Rules 7.1 to 7.5.

