

WSR 21-04-092
RULES OF COURT
STATE SUPREME COURT
[January 8, 2021]

IN THE MATTER OF THE ) ORDER
SUGGESTED AMENDMENTS TO ) NO. 25700-A-1333
RULES OF PROFESSIONAL )
CONDUCT (RPC) 5.5— )
UNAUTHORIZED PRACTICE OF )
LAW; MULTIJURISDICTIONAL )
PRACTICE OF LAW; RPC 7.1— )
COMMUNICATIONS CONCERNING )
A LAWYER'S SERVICES; RPC 7.2— )
ADVERTISING RESERVED; RPC 7.3 )
—SOLICITATION OF CLIENTS; RPC )
7.4—COMMUNICATION OF FIELDS )
OF PRACTICE AND )
SPECIALIZATION RESERVED; RPC )
7.5—FIRM NAME AND )
LETTERHEADS RESERVED )

The Washington State Bar Association, having recommended the adoption of the proposed amendments to Rules of Professional Conduct (RPC) 5.5—Unauthorized Practice of Law; Multijurisdictional Practice of Law; RPC 7.1—Communications Concerning a Lawyer's Services; RPC 7.2—Advertising Reserved; RPC 7.3—Solicitation of Clients; RPC 7.4—Communication of Fields of Practice and Specialization Reserved; RPC 7.5—Firm Name and Letterheads Reserved, and the Court having considered the proposed amendments, and having determined that the proposed amendments will aid in the prompt and orderly administration of justice;

Now, therefore, it is hereby

ORDERED:

(a) That the proposed amendments as shown below are adopted.

(b) That pursuant to the emergency provisions of GR 9 (j)(1), the proposed amendments will be expeditiously published in the Washington Reports and will become effective upon publication.

DATED at Olympia, Washington this 8th day of January, 2021.

Stephens, C.J.
Johnson, J. Gordon McCloud, J.
Madsen, J. Yu, J.
Owens, J. Montoya-Lewis, J.
Gonzalez, J. Whitener, J.

RULES OF PROFESSIONAL CONDUCT

RPC 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] [Washington revision] 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] - [3] [Unchanged.]

[4] [Washington revision] It is professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit or misrepresentation. RPC 8.4(c). 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.

Additional Washington Comments (5 - 14)

[5] 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.

[6] This rule permits public dissemination of information concerning a lawyer's name or firm name, address, e-mail 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.

[7] 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.

Areas of Expertise/Specialization

[8] A lawyer may indicate areas of practice in communications about the lawyer's services. If a lawyer practices only in certain fields, or will not accept matters except in a specified field or fields, the lawyer is permitted to so indicate. A lawyer is generally permitted to state that the lawyer is a "specialist," practices a "specialty," or "specializes in" particular fields, but such communications are subject to the "false and misleading" standard applied in RPC 7.1 to communications concerning a lawyer's services. A lawyer may state that the lawyer is certified as a specialist in a field of law if such certification is granted by an organization approved by an appropriate state authority or accredited by the American Bar Association or another organization, such as a state bar association, that has been approved by the state authority to accredit organizations that certify lawyers as specialists. Certification signifies that an objective entity has recognized an advanced degree of knowledge and

experience in the specialty area greater than is suggested by general licensure to practice law. Certifying organizations may be expected to apply standards of experience, knowledge and proficiency to insure that a lawyer's recognition as a specialist is meaningful and reliable. In order to insure that consumers can obtain access to useful information about an organization granting certification, the name of the certifying organization must be included in any communication regarding the certification.

[9] In advertising concerning an LLLT's services, an LLLT is required to communicate the fact that the LLLT has a limited license in the particular fields of law for which the LLLT is licensed and must not state or imply that the LLLT has broader authority to practice than is in fact the case. See LLLT RPC 7.1(b). When lawyers and LLLTs are associated in a firm, lawyers with managerial or pertinent supervisory authority must take measures to assure that the firm's communications conform with these obligations. See Rule 5.10.

#### Firm Names

[10] 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 or LLLT not associated with the firm or a predecessor of the firm, or the name of an individual who is neither a lawyer nor an LLLT.

[11] Lawyers or LLLTs 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.

[12] When lawyers and LLLTs are associated with each other in a law firm, the firm may be designated using the name of a member LLLT if the name is not otherwise in violation of this rule.

[13] Lawyers or LLLTs practicing out of the same office who are not partners, shareholders of a professional corporation, or members of a professional limited liability company or partnership may not join their names together. Lawyers or LLLTs who are not (1) partners, shareholders of a professional corporation, or members of a professional limited liability company or partnership, or (2) employees of a sole proprietorship, partnership, professional corporation, or members of a professional limited liability company or partnership or other organization, or (3) in the relationship of being "Of Counsel" to a sole proprietorship, partnership, professional corporation, or members of a professional limited liability company or partnership or other organization, must have separate letterheads, cards, and pleading paper, and must sign their names individually at the end of all pleadings and correspondence and not in conjunction with the names of other lawyers or LLLTs.

[14] A law firm with offices in more than one jurisdiction may use the same name or other professional designation in each jurisdiction. See RPC 5.5(f) & cmt. [22]. In order to avoid misleading the public, when lawyers or LLLTs are identified as practicing in a particular office, the firm should indicate the jurisdictional limitations on those not licensed to practice in the jurisdiction where the office is located.

~~RPC 7.2 ADVERTISING~~ **[Reserved.]**

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

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

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

~~(2) pay the usual charges of a legal service plan or a not-for-profit lawyer referral service;~~

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

~~(4) refer clients to another lawyer or LLLT pursuant to an agreement not otherwise prohibited under these Rules that provides for the other person to refer clients or customers to the lawyer, if~~

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

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

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

**Comment**

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

[2] This Rule permits public dissemination of information concerning a lawyer's name or firm name, address, e-mail 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, particular-

ly 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 of a possible client through a real-time electronic exchange initiated by the lawyer.

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

*Paying Others to Recommend a Lawyer*

[5] **[Washington revision]** Except as permitted under paragraphs (b)(1)–(b)(4), lawyers are not permitted to pay others for recommending the lawyer's services or for channeling professional work in a manner that violates Rule 7.3. A communication contains a recommendation if it endorses or vouches for a lawyer's credentials, abilities, competence, character, or other professional qualities. Paragraph (b)(1), however, allows a lawyer to pay for advertising and communications permitted by this Rule, including the costs of print directory listings, on-line directory listings, newspaper ads, television and radio airtime, domain-name registrations, sponsorship fees, Internet-based advertisements, and group advertising. A lawyer may compensate employees, agents and vendors who are engaged to provide marketing or client-development services, such as publicists, public-relations personnel, business-development staff and website designers. Moreover, a lawyer may pay others for generating client leads, such as Internet-based client leads, as long as the lead generator does not recommend the lawyer, any payment to the lead generator is consistent with Rules 1.5(e) (division of fees) and 5.4 (professional independence of the lawyer), and the lead generator's communications are consistent with Rule 7.1 (communications concerning a lawyer's services). To comply with Rule 7.1, a lawyer must not pay a lead generator that states, implies, or creates a reasonable impression that it is recommending the lawyer, is making the referral without payment from the lawyer, or has analyzed a person's legal problems when determining which lawyer should receive the referral. See also Rule 5.3 (duties of lawyers and law firms with respect to the conduct of nonlawyers); RPC 8.4(a) (duty to avoid violating the rules through the acts of another). For the definition of nonlawyer for the purposes of Rule 5.3, see Washington Comment [5] to Rule 5.3.

[6] **[Washington revision]** A lawyer may pay the usual charges of a legal service plan or a not-for-profit lawyer referral service. A legal service plan is a prepaid or group legal service plan or a similar delivery system that assists people who seek to secure legal representation. A lawyer referral service, on the other hand, is any organization that holds itself out to the public as a lawyer referral service. Such referral services are understood by the public to be consumer-oriented organizations that provide unbiased referrals to lawyers with appropriate experience in the subject matter of the representation and afford other client protections, such as complaint procedures or malpractice insurance requirements. Consequently, this Rule only permits a lawyer to pay the usual charges of a not-for-profit lawyer referral service.

[7] A lawyer who accepts assignments or referrals from a legal service plan or referrals from a lawyer referral service must act reasonably to assure that the activities of the plan or service are com-

patible with the lawyer's professional obligations. See Rule 5.3. Legal service plans and lawyer referral services may communicate with the public, but such communication must be in conformity with these Rules. Thus, advertising must not be false or misleading, as would be the case if the communications of a group advertising program or a group legal services plan would mislead the public to think that it was a lawyer referral service sponsored by a state agency or bar association. Nor could the lawyer allow in-person, telephonic, or real-time contacts that would violate Rule 7.3.

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

**Additional Washington Comment (9)**

~~[9]~~ That portion of Model Rule 7.2 (b) (4) that allows lawyers to enter into reciprocal referral agreements with nonlawyer professionals was not adopted. A lawyer may agree to refer clients to an LLLT in return for the undertaking of that person to refer clients to the lawyer. The guidance provided in Comment [8] to this Rule is also applicable to reciprocal referral arrangements between lawyers and LLLTs. Under LLLT RPC 1.5(e), however, an LLLT may not enter into an arrangement for the division of a fee with a lawyer who is not in the same firm as the LLLT.

**RPC 7.3 SOLICITATION OF CLIENTS**

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

- (1) is a lawyer or an LLLT or the solicitation is false or misleading;
- (2) has a family, close personal, or prior professional relationship with the lawyer; or the lawyer knows or reasonably should know that the physical, emotional, or mental state of the subject of the solicitation is such that the person could not exercise reasonable judgment in employing a lawyer;
- (3) has consented to the contact by requesting a referral from a not-for-profit lawyer referral service. the subject of the solicitation has made known to the lawyer a desire not to be solicited by the lawyer; or
- (4) the solicitation involves coercion, duress, or harassment.

(b) A lawyer shall not solicit professional employment from a client by written, recorded or electronic communication or by in-person, telephone or real-time electronic contact even when not otherwise

prohibited by paragraph (a), if compensate, or give or promise anything of value to, a person who is not an employee or lawyer in the same law firm for the purpose of recommending or securing the services of the lawyer or law firm, except that a lawyer may:

(1) the target of the solicitation has made known to the lawyer a desire not to be solicited by the lawyer; or pay the reasonable cost of advertisements or communications permitted by RPC 7.1, including online group advertising;

(2) the solicitation involves coercion, duress or harassment. pay the usual charges of a legal service plan or a not-for-profit lawyer referral service;

(3) pay for a law practice in accordance with RPC 1.17;

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

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

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

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

(c) [Reserved.]

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

#### **Comment**

[1] [Washington revision] A solicitation is a targeted communication initiated by the or on behalf of a lawyer that is directed to a specific person and that offers to provide, or can reasonably be understood as offering to provide, legal services. Solicitations can include in-person, written, telephonic, and electronic communications. 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] [Reserved.] There is a potential for abuse when a solicitation involves direct in-person, live telephone or real-time electronic contact by a lawyer with someone known to need legal services. These forms of contact subject a person to the private importuning of the trained advocate in a direct interpersonal encounter. The person, who may already feel overwhelmed by the circumstances giving rise to the need for legal services, may find it difficult fully to evaluate all available alternatives with reasoned judgment and appropriate self-interest in the face of the lawyer's presence and insistence upon being retained immediately. The situation is fraught with the possibility of undue influence, intimidation, and over-reaching.

[3] [Reserved.] 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 con-

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

[5] [~~Reserved.~~ **Washington revision**] 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 close personal or family relationship, or in situations in which the lawyer is motivated by considerations other than the lawyer's pecuniary gain. Nor is there a serious potential for abuse when the person contacted is a lawyer or an LLT. 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 its members or beneficiaries.

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

[7] [~~Reserved~~] This Rule is not intended to prohibit a lawyer from contacting representatives of organizations or groups that may be interested in establishing a group or prepaid legal plan for their members, insureds, beneficiaries, or other third parties for the purpose of informing such entities of the availability of and details concerning the plan or arrangement which the lawyer or lawyer's firm is willing to offer. This form of communication is not directed to people who are seeking legal services for themselves. Rather, it is usually addressed to an individual acting in a fiduciary capacity seeking a supplier of legal services for others who may, if they choose, become prospective clients of the lawyer. Under these circumstances, the activity which the lawyer undertakes in communicating with such representatives and the type of information transmitted to

~~the individual are functionally similar to and serve the same purpose as advertising permitted under Rule 7.2.~~

[8] [Reserved.]

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

**Additional Washington Comments (10 - 14 16)**

[10] ~~A lawyer who receives a referral from a third party should exercise caution in contacting the prospective client directly by in-person, live telephone, or real-time electronic contact. Such contact is generally prohibited by this Rule unless the prospective client has asked to be contacted by the lawyer. A prospective client may request such contact through a third party. Prior to initiating contact with the prospective client, however, the lawyer should confirm with the source of the referral that the prospective client has indeed made such a request. Similarly, when making referrals to other lawyers, the referring lawyer should discuss with the prospective client whether he or she wishes to be contacted directly. While all communications about a lawyer's services are subject to the general prohibition against false or misleading communication in RPC 7.1, in-person solicitation can create problems because of the particular circumstances in which the solicitation takes place, and those circumstances are, therefore, appropriately regulated. subsection (a) of this rule prohibits solicitation in circumstances or through means that are not conducive to intelligent, rational decisions. Unwanted solicitations (after the subject has informed the lawyer not to make contact) or solicitations involving coercion, duress, or harassment are specifically prohibited. Such circumstances and means could be the harassment of early morning or late-night telephone calls to a potential client to solicit legal work, repeated calls at any time of day, solicitation of an accident victim or the victim's family shortly after the accident or while the victim is still in medical distress (particularly where a lawyer seeks professional employment by in-person or other real-time contact in such circumstances), or solicitation of vulnerable subjects, such as persons facing incarceration, or their family members, in or near a courthouse. The prohibition on solicitation of a subject who cannot "exercise reasonable judgment in employing a lawyer" extends to an individual with diminished capacity who cannot adequately act in the individual's own interest, and the provisions of RPC 1.14 may provide guidance in evaluating "the physical, emotional, or mental" state of the subject.~~

[11] ~~Those in need of legal representation often seek assistance in finding a lawyer through a lawyer referral service. Washington~~

~~adopted paragraph (a) (3) in order to facilitate communication between lawyers and potential clients who have specifically requested a referral from a not-for-profit lawyer referral service. Under this paragraph, a lawyer receiving such a referral may contact the potential client directly by in-person, live telephone, or real-time electronic contact to discuss possible representation. Under RPC 5.1, RPC 5.3, and RPC 8.4(a), the solicitation restrictions that apply to the lawyer's own acts or conduct also extend to acts or conduct by employees, agents, or any third persons acting on the lawyer's behalf.~~

~~[12] Washington did not adopt paragraph (c) of the Model Rule relating to labeling of communications with prospective clients. A specific labeling requirement is unnecessary in light of the prohibitions in Rule 7.1 against false or misleading communications. Washington has not adopted subsection (e) of the Model Rule creating a safe harbor for in-person and telephonic solicitations in the context of a prepaid or group legal services plan because solicitations of professional employment by any means and in all contexts are permitted subject to the exceptions contained in subsection (a) (1) - (4). In addition, prior provisions and comments under RPC 7.3 in Washington relating to in-person, telephonic, or real-time electronic solicitations in the context of referrals from a third party or a lawyer referral service have been removed because solicitations by any means in this context are permitted subject to the exceptions contained in paragraphs (a) (1)-(4) of this RPC.~~

*Paying Others to Recommend a Lawyer*

~~[13] The phrase "directly or through a third person" in paragraph (a) was retained from former Washington RPC 7.3(a). Subsection (b) of this rule was derived from former Washington RPC 7.2(b).~~

~~[14] The phrase "prospective client" in Rule 7.3(a) has been replaced with the phrase "possible client" because the phrase "prospective client" has become a defined phrase under RPC 1.18 with a different meaning. This is a departure from the ABA Model Rule which has dispensed altogether with the phrase "from a prospective client" in this rule. The rule is not intended to preclude lawyers from in-person conversations with friends, relatives or other professionals (i.e. intermediaries) about other friends, relatives, clients, or patients who may need or benefit from the lawyer's services, so long as the lawyer is not asking or expecting the intermediary to engage in improper solicitation. See RPC 8.4(a) which prohibits improper solicitation "through the acts of another." Absent limitation of prohibited in-person communications to "possible clients" there is danger that lawyers might mistakenly infer that the kind of benign conversations with non-client intermediaries described above are precluded by this rule. Except as permitted under subsections (b) (1)-(b) (5), lawyers are not permitted to pay others for recommending the lawyer's services or for channeling professional work in a manner that violates RPC 7.1 or RPC 7.3. A communication contains a recommendation if it endorses or vouches for a lawyer's credentials, abilities, competence, character, or other professional qualities. Subsection (b) (1), however, allows a lawyer to pay for advertising and solicitations permitted by RPC 7.1 and this rule, including the costs of print directory listings, online directory listings, newspaper ads, television and radio airtime, domain-name registrations, sponsorship fees, Internet-based advertisements, and group advertising. A lawyer may compensate employees, agents, and vendors who are engaged to provide marketing or client-development services, such as publicists, public-relations personnel, business-development staff, and website designers, as long as the em-~~

ployees, agents, and vendors do not direct or regulate the lawyer's professional judgment (see RPC 5.4(c)). Moreover, a lawyer may pay others for generating client leads, such as Internet-based client leads, as long as the lead generator does not recommend the lawyer, any payment to the lead generator is consistent with RPC 1.5(e) (division of fees) and 5.4 (professional independence of the lawyer), and the lead generator's communications are consistent with RPC 7.1 (communications concerning a lawyer's services). To comply with RPC 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 RPC 5.3 (duties of lawyers and law firms with respect to the conduct of nonlawyers); RPC 8.4(a) (duty to avoid violating the rules through the acts of another). For the definition of non-lawyer for the purposes of RPC 5.3, see Washington cmt. 5 to Rule 5.3.

[15] A lawyer may pay the usual charges of a legal service plan or a not-for-profit lawyer referral service. A "legal service plan" is a prepaid or group legal service plan or a similar delivery system that assists people who seek to secure legal representation. A "lawyer referral service," on the other hand, is any individual or entity that operates for the direct or indirect purpose of referring potential clients to lawyers, regardless of whether the term "referral service" is used. The "usual charges" of a legal service plan or not-for-profit lawyer referral service are fees that are openly promulgated and uniformly applied. Not-for-profit lawyer referral services are understood by the public to be consumer-oriented organizations that provide unbiased referrals to lawyers with appropriate experience in the subject matter of the representation and afford other client protections, such as complaint procedures or malpractice insurance requirements.

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

**Reviser's note:** The typographical errors in the above section occurred in the copy filed by the agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

**RPC 7.4 COMMUNICATION OF FIELDS OF PRACTICE AND SPECIALIZATION [Reserved.]**

~~(a) A lawyer may communicate the fact that the lawyer does or does not practice in particular fields of law.~~

~~(b) 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.~~

~~(c) A lawyer engaged in Admiralty practice may use the designation "Admiralty," "Proctor in Admiralty" or substantially similar designation.~~

~~(d) A lawyer shall not state or imply that a lawyer is a specialist in a particular field of law, except upon issuance of an identifying certificate, award, or recognition by a group, organization, or association, a lawyer may use the terms "certified", "specialist", "expert", or any other similar term to describe his or her qualifications as a lawyer or his or her qualifications in any subspecialty of the law. If the terms are used to identify any certificate, award, or recognition by any group, organization, or association, the reference must:~~

~~(1) be truthful and verifiable and otherwise comply with Rule 7.1;~~

~~(2) identify the certifying group, organization, or association; and~~

~~(3) the reference must state that the Supreme Court of Washington does not recognize certification of specialties in the practice of law and that the certificate, award, or recognition is not a requirement to practice law in the state of Washington.~~

#### **Comment**

~~[1] **[Washington revision]** Paragraph (a) of this Rule permits a lawyer to indicate areas of practice in communications about the lawyer's services. If a lawyer practices only in certain fields, or will not accept matters except in a specified field or fields, the lawyer is permitted to so indicate.~~

~~[2] Paragraph (b) recognizes the long-established policy of the Patent and Trademark Office for the designation of lawyers practicing before the Office. Paragraph (c) recognizes that designation of Admiralty practice has a long historical tradition associated with maritime commerce and the federal courts.~~

~~[3] **[Reserved.]**~~

#### **Additional Washington Comment (4 -- 5)**

~~[4] Statements indicating that the lawyer is a "specialist," practices a "specialty," "specializes in" particular fields, and the like, are subject to the limitations set forth in paragraph (d). The provisions of paragraph (d) were taken from former Washington RPC 7.4(b).~~

~~[5] In advertising concerning an LLLT's services, an LLLT is required to communicate the fact that the LLLT has a limited license in the particular fields of law for which the LLLT is licensed and must not state or imply that the LLLT has broader authority to practice than is in fact the case. See LLLT RPC 7.4(a); see also LLLT RPC 7.2(c) (advertisements must include the name and office address of at least one responsible LLLT or law firm). When lawyers and LLLTs are associated in a firm, lawyers with managerial or pertinent supervisory authority must take measures to assure that the firm's communications conform with these obligations. See Rule 5.10.~~

#### **RPC 7.5 FIRM NAMES AND LETTERHEADS **[Reserved.]****

~~(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 agency or with a public or charitable legal services organization and is not otherwise in violation of Rule 7.1.

(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 or LLLTs 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 or LLLT 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 or LLLT is not actively and regularly practicing with the firm.

(d) Lawyers may state or imply that they practice in a partnership or other organization only when that is a fact.

**Comment**

[1] ~~[Washington revision]~~ 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 or LLLT not associated with the firm or a predecessor of the firm, or the name of an individual who is neither a lawyer nor an LLLT.

[2] ~~[Washington revision]~~ With regard to paragraph (d), lawyers or LLLTs 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.

**Additional Washington Comments (3 - 4)**

[3] When lawyers and LLLTs are associated with each other in a law firm, the firm may be designated using the name of a member LLLT if the name is not otherwise in violation of Rule 7.1, this Rule, or LLLT RPC 7.5. See also Washington Comment [4] to this Rule.

[4] Lawyers or LLLTs practicing out of the same office who are not partners, shareholders of a professional corporation, or members of a professional limited liability company or partnership may not join their names together. Lawyers or LLLTs who are not (1) partners, shareholders of a professional corporation, or members of a professional limited liability company or partnership, or (2) employees of a sole proprietorship, partnership, professional corporation, or members of a professional limited liability company or partnership or other organization, or (3) in the relationship of being "Of Counsel" to a sole proprietorship, partnership, professional corporation, or members of a professional limited liability company or partnership or other organization, must have separate letterheads, cards and pleading paper, and must sign their names individually at the end of all pleadings and correspondence and not in conjunction with the names of other

lawyers or LLLTs. (The provisions of this Comment were taken from former Washington RPC 7.5(d).)

**RPC 5.5 UNAUTHORIZED PRACTICE OF LAW; MULTIJURISDICTIONAL PRACTICE OF LAW**

(a) - (e) Unchanged.

(f) Subsection (b)(1) of this rule does not prohibit a law firm with offices in multiple jurisdictions from establishing and maintaining an office in this jurisdiction even if some of the lawyers who are members of the firm or are otherwise employed or retained by or associated with the law firm are not authorized to practice law in this jurisdiction.

Comment

[1] - [3] Unchanged.

[4] [Washington revision] Other than as authorized by law or this Rule, a lawyer who is not admitted to practice generally in this jurisdiction violates paragraph (b) if the lawyer establishes an office or other systematic and continuous presence in this jurisdiction for the practice of law. Presence may be systematic and continuous even if the lawyer is not physically present here. Such a lawyer must not hold out to the public or otherwise represent that the lawyer is admitted to practice law in this jurisdiction. See also RPC 7.1 and ~~7.5(b)~~ Washington cmt. 14.

[5] [Washington revision] There are occasions in which a lawyer admitted to practice in another United States jurisdiction, and not disbarred or suspended from practice in any jurisdiction, may provide legal services on a temporary basis in this jurisdiction under circumstances that do not create an unreasonable risk to the interests of their clients, the public or the courts. Paragraph (c) identifies four such circumstances. The fact that conduct is not so identified does not imply that the conduct is or is not authorized. With the exception of paragraph (d)(2), this Rule does not authorize a United States or foreign lawyer to establish an office or other systematic and continuous presence in this jurisdiction without being admitted to practice generally or as house counsel under APR 8(f) here.

[6] - [13] Unchanged.

[14] [Washington revision] Paragraphs (c)(3) and (c)(4) require that the services arise out of or be reasonably related to the lawyer's practice in a jurisdiction in which the lawyer is admitted. A variety of factors evidence such a relationship. The lawyer's client may have been previously represented by the lawyer, or may be resident in or have substantial contacts with the jurisdiction in which the lawyer is admitted. The matter, although involving other jurisdictions, may have a significant connection with that jurisdiction. In other cases, significant aspects of the lawyer's work might be conducted in that jurisdiction or a significant aspect of the matter may involve the law of that jurisdiction. The necessary relationship might arise when the client's activities or the legal issues involve multiple jurisdictions, such as when the officers of a multinational corporation survey potential business sites and seek the services of their lawyer in assessing the relative merits of each. In addition, the services may draw on the lawyer's recognized expertise developed through the regular practice of law on behalf of clients in matters involving a particular body of federal, nationally-uniform, foreign, or international law. Lawyers desiring to provide pro bono legal services on a temporary basis in Washington following determination by the Supreme Court that an emergency affecting the justice system, as a result of a natural or other major disaster, has occurred, who are not

otherwise authorized to practice law in Washington, as well as lawyers from another affected jurisdiction who seek to practice law temporarily in Washington, but who are not otherwise authorized to practice law in Washington, should consult Admission to Practice Rule 27 on Provision of Legal Services Following Determination of Major Disaster.

[15] - [20] Unchanged.

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

Additional Washington Comment (22)

[22] Subsection (f) is derived from former RPC 7.5(b), which permitted law firms with offices in more than one jurisdiction to use the same name or other professional designation in each jurisdiction, and is intended to maintain authorization in the Rules of Professional Conduct for the presence of multijurisdictional law firms in Washington for purposes of RCW 2.48.180(7).

**Reviser's note:** The typographical errors in the above section occurred in the copy filed by the agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

**Reviser's note:** The spelling error in the above section occurred in the copy filed by the agency and appears in the Register pursuant to the requirements of RCW 34.08.040.