

IN THE SUPREME COURT OF TENNESSEE  
AT NASHVILLE

FILED

09/01/2021

Clerk of the  
Appellate Courts

**IN RE: PETITION FOR THE ADOPTION OF REVISIONS TO TENN. SUP.  
CT. R. 8, RPCs 7.1, 7.2, 7.3, 7.4, 7.5, and 7.6**

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**No. ADM2020-01505**

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**ORDER**

On October 27, 2020, the Tennessee Bar Association (“TBA”) filed a petition asking this Court to amend Tennessee Supreme Court Rule 8, RPCs 7.1, 7.2, 7.3, 7.4, 7.5, and 7.6. On November 13, 2020, this Court entered an order inviting the bench, the bar, and the public to submit written comments on the TBA’s proposal and set a deadline of March 12, 2021.

The Tennessee Board of Professional Responsibility, the Knoxville Bar Association, the Tennessee Trial Lawyers Association, and two lawyers submitted comments. The TBA also submitted a comment that, in large measure, replied to the suggestions and objections raised in other comments. The Court expresses its appreciation to the TBA and to all that submitted comments.

Upon consideration of the TBA’s petition, as well as the public comments received, the Court hereby adopts amendments to Tennessee Supreme Court Rule 8, RPCs 7.1, 7.2, 7.3, 7.4, and 7.5 as set out in the appendices to this order. Appendix A shows the amendments by underlining new text and striking through deleted text. Appendix B contains a clean copy of amended RPCs 7.1, 7.2, 7.3, 7.4, and 7.5.

We decline at this time to grant the TBA’s petition to amend Tennessee Supreme Court Rule 8, RPC 7.6. However, by a separate order also filed today, this Court has published proposed amendments to RPC 7.6 and to Tennessee Supreme Court Rule 44 and has invited the bench, the bar, and the public to submit comments by November 30, 2021. We encourage the TBA and all other interested persons and entities to submit comments on the proposed amendments.

The Clerk shall provide a copy of this order, including the appendices, to LexisNexis and to Thomson Reuters. In addition, this order, including the appendices, shall be posted on the Court's website.

Costs associated with this petition are waived.

It is so ORDERED.

PER CURIAM

# ADM2020-01505

## APPENDIX A AMENDMENTS TO

TENN. SUP. CT. R. 8, RPC 7.1, 7.2, 7.3, 7.4, and 7.5

[NEW TEXT IS INDICATED BY UNDERLINING; DELETED TEXT IS  
INDICATED BY ~~STRIKING~~]

### CHAPTER 7 INFORMATION ABOUT LEGAL SERVICES

#### **RULE 7.1: COMMUNICATIONS CONCERNING A LAWYER'S SERVICES**

(a) 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.

(b) Subject to the requirements of paragraph (a) above and RPCs 7.3 and 7.6, a lawyer may advertise services through written, recorded, or electronic communications, including public media. Any communication made under this Rule shall include the name and contact information of at least one lawyer or law firm responsible for its content.

(c) A copy or recording of each advertisement shall be retained by the lawyer for two years after its last dissemination along with a record of when and where the advertisement appeared.

#### **Comment.**

[1] This Rule governs all communications about a lawyer's services, ~~including advertising permitted by RPC 7.2 and solicitations directed to specific recipients permitted by RPC 7.3.~~ Whatever means are used to make known a lawyer's services, statements about them must be truthful.

[2] Truthful statements that are misleading are also prohibited by this Rule. A truthful statement is misleading if it omits a fact necessary to make the lawyer's communication considered as a whole not materially misleading. A truthful statement is also misleading if there is a substantial likelihood that it will lead a reasonable person to formulate a specific conclusion about the lawyer or the lawyer's services for which there is no reasonable

factual foundation.

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

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

[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 risks of practices that are misleading or overreaching.

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

[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.

[8] ~~[5]~~A lawyer may advertise the fact that a subjective characterization or description has been conferred upon him or her by an organization as long as the organization has made inquiry into the lawyer's fitness and does not issue or confer such designations indiscriminately or for a price.

### **Area of Expertise/Specialization**

[9] 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. However, a lawyer may not communicate that the lawyer is a "specialist," practices a "specialty," "specializes in" a particular field, or that the lawyer has been recognized or certified as a specialist in a particular field of law unless the communication is regarding patent matters or admiralty law or in accordance with paragraph [10] of this Comment. Recognition of specialization in patent matters is a matter of long-established policy of the Patent and Trademark Office. The designation of admiralty practice also has a long historical tradition associated with maritime commerce and the federal courts.

[10] A lawyer is permitted to communicate that the lawyer is a specialist or has been certified or recognized as a specialist when the lawyer has been so certified or recognized by an organization accredited by the American Bar Association's House of Delegates. However, before a lawyer may communicate that the lawyer is a specialist, the lawyer must first register the specialty certification with the Tennessee Commission on Continuing Legal Education in accordance with Tennessee Supreme Court Rule 21. A lawyer shall not state or imply that the lawyer has received any certification of specialty from the Tennessee Commission on Continuing Legal Education.

### **Firm Names**

[11] A firm may be designated by the names of all or some of its members, by the names of deceased or retired 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 also may 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 not 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 or retired partner is, strictly speaking, a trade name. The use of such names to designate law firms has proven a useful means of identification. However, it is misleading to use the name of a lawyer not associated with

the firm or a predecessor of the firm, or the name of a nonlawyer.

[12] It is not necessary to change a law firm's name or letterhead when a member of the firm interrupts his or her practice to serve, for example, as an elected member of the Tennessee General Assembly, so long as the lawyer reasonably expects to resume active and regular practice with the firm at the end of the legislative session. Such a hiatus from practice is not for a substantial period of time. If, however, a lawyer were to curtail his or her practice and enter public service for a longer or indefinite period of time, the lawyer's firm would have to alter its name and letterhead.

[13] Lawyers sharing office facilities, but who are not in fact associated with each other in a law firm, may not denominate themselves as, for example, "Smith and Jones," for that title suggests that they are practicing law together in a firm.

### **Record of Advertising**

[14] Paragraph (c) requires that a lawyer retain a copy or recording of any advertisement for two years after its last dissemination, along with a record of when and where the advertisement appeared. If advertisements that are similar in all material respects are published or displayed more than once or distributed to more than one person, the lawyer may comply with this requirement by retaining a single copy of the advertisement for two years after the last of the materially similar advertisements are disseminated. A lawyer may comply with the requirement of paragraph (b) by complying with guidelines that may be adopted by the Board of Professional Responsibility concerning certain types of advertisements, including websites, email, or other electronic forms of communication or of changes to such communications.

### **DEFINITIONAL CROSS-REFERENCES**

"Firm" and "Law firm" See RPC 1.0(c)

"Fraud" See RPC 1.0(d)

"Material" and "materially" See RPC 1.0(o)

"Reasonable" See RPC 1.0(h)

"Substantial" and "Substantially" See RPC 1.0(l)

"Written" See RPC 1.0(n)

**RULE 7.2: ADVERTISING**

[Deleted and Reserved.]

~~(a) Subject to the requirements of paragraphs (b) through (d) below and RPCs 7.1, 7.3, 7.4, 7.5, and 7.6, a lawyer may advertise services through written, recorded, or electronic communication, including public media.~~

~~(b) A copy or recording of each advertisement shall be retained by the lawyer for two years after its last dissemination along with a record of when and where the advertisement appeared.~~

~~(c) A lawyer shall not give anything of value to a person for recommending or publicizing the lawyer's services except that a lawyer may pay for the following:~~

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

~~(2) the usual charges of a registered intermediary organization as permitted by RPC 7.6;~~

~~(3) a sponsorship fee or a contribution to a charitable or other non profit organization in return for which the lawyer will be given publicity as a lawyer; or~~

~~(4) a law practice in accordance with RPC 1.17.~~

~~(d) Except for communications by registered intermediary organizations, any advertisement shall include the name and office address of at least one lawyer or law firm assuming responsibility for the communication.~~

**Comment**

~~[1] This Rule governs general advertising through public media and other communications that are not directed to specifically identified individuals. The Rule encompasses all possible media through which such communications may be directed to the public. Communications that are directed to specifically identified recipients are governed by RPC 7.3.~~

~~[2] 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. Further, 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 is significant. Nevertheless, advertising by lawyers shall not contain false or misleading communications about the lawyer or the lawyer's services.~~

~~[3] Among other things, this Rule permits public dissemination of information concerning a lawyer's name or firm name, address, email address, website, and telephone number; the kinds of services the lawyer will undertake; the basis on which the lawyer's fees are determined, including prices for specific services and payment and credit arrangements; a lawyer's foreign language ability; names of references and, with their consent, names of clients regularly represented; and other information that might invite the attention of those seeking legal assistance.~~

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

### **Record of Advertising**

~~[5] Paragraph (b) requires that a lawyer retain a copy or recording of any advertisement for two years after its last dissemination along with a record of when and where the advertisement appeared. If advertisements that are similar in all material respects are published or displayed more than once or distributed to more than one person, the lawyer may comply with this requirement by retaining a single copy of the advertisement for two years after the last of the materially similar advertisements are disseminated. A lawyer may comply with the requirement of paragraph (b) by complying with guidelines that may be adopted by the Board of Professional Responsibility concerning certain types of advertisements, including websites, e-mail, or other electronic forms of communication or of changes to such communications.~~

### **Paying Others to Recommend a Lawyer**

~~[6] A lawyer is allowed to pay for advertising permitted by this Rule and for the purchase of a law practice in accordance with the provisions of RPC 1.17, but otherwise is not permitted to pay another person for channeling professional work to the lawyer. This restriction does not prevent an organization or person other than the lawyer from advertising or recommending the lawyer's services. Thus, a legal aid agency or prepaid legal services plan may pay to advertise legal services provided under its auspices. Likewise, a lawyer may participate in not for profit lawyer referral programs and pay the usual fees charged by such programs. Paragraph (c) does not prohibit paying regular compensation to an assistant, such as a secretary, to prepare communications permitted by this Rule.~~

~~[7] 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 RPCs 1.5(e) (division of fees) and 5.4 (professional independence of the lawyer), the lead generator's communications are consistent with RPC 7.1 (communications concerning a lawyer's services), and subject to RPC 7.6 and Tenn. Sup. Ct. R. 44 if the lead generator qualifies as an intermediary organization pursuant to RPC 7.6. 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).~~

#### ~~DEFINITIONAL CROSS-REFERENCES~~

~~"Law firm" *See* RPC 1.0(c) "Reasonable" *See* RPC 1.0(h) "Written" *See* RPC 1.0(n)~~

## **RULE 7.3: SOLICITATION OF ~~POTENTIAL~~ CLIENTS**

### Solicitation

(a) A solicitation is a targeted communication initiated by or on behalf of a lawyer that is directed to a specific person and that offers to provide, or reasonably can be understood as offering to provide, legal services for a particular matter.

(b) ~~(a)~~ A lawyer shall not solicit by live person-to-person contact, or permit employees or agents of the lawyer to in-person, live telephone, or real-time electronic contact solicit by live person-to-person contact on the lawyer's behalf, professional employment from a potential 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~~
- (2) is a person who routinely uses for business purposes the type of legal services offered by the lawyer;
- (3) is pursuant to a court-ordered class action notification; or
- ~~(2)~~ (4) has a family, close personal, or prior professional relationship with the lawyer.; or (3) has initiated a contact with the lawyer.

### Written Solicitation

(c) Every written, recorded, or electronic solicitation by or on behalf of a lawyer seeking professional employment from anyone known to be in need of legal services in a particular matter shall include the words "Advertising Material" on the outside envelope, if any, and at the beginning and ending of any recorded or electronic communication, unless the recipient of the communication is a person specified in paragraphs (b)(1)-(4). The subject matter of the proposed representation shall not be disclosed on the outside of the envelope (or self-mailing brochure) in which the communication is delivered. Unless the contents thereof include a solicitation of employment, a lawyer need not include the words "Advertising Material" when sending announcement of associations or affiliations, newsletters, brochures, and other similar communications.

### Limitation on Solicitation

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

- (1) the target of the solicitation potential-client has made known to the lawyer a desire not to be solicited by the lawyer; or
- (2) the solicitation involves coercion, duress, fraud, harassment, intimidation, overreaching, or undue influence; or

(3) a significant motive for the solicitation is the lawyer's pecuniary gain and the communication concerns an action for personal injury, divorce or legal separation, worker's compensation, wrongful death, or otherwise relates to an accident, filing of divorce or legal separation, or disaster involving the person to whom the communication is addressed or a member of that person's family, unless the accident, filing of divorce or legal separation, or disaster occurred more than thirty (30) days prior to the mailing or transmission of the communication or the lawyer has a family, close personal, or prior professional relationship with the person solicited.

~~(b) Unless the contents thereof include a solicitation of employment, a lawyer need not comply with the requirements of paragraph (c) above when sending announcements of an association or affiliation with another lawyer that complies with the requirements of RPC 7.5, newsletters, brochures, and other similar communications.~~

~~(c) If a significant motive for the solicitation is the lawyer's pecuniary gain, a lawyer shall not send a written, recorded, or electronic communication soliciting professional employment from a specifically identified recipient who is not a person specified in paragraphs (a)(1) or (a)(2) or (a)(3), unless the communication complies with the following requirements:~~

~~(1) The words "Advertising Material" appear on the outside of the envelope, if any, in which a communication is sent and at the beginning and ending of any written, recorded or electronic communication.~~

~~(2) A lawyer shall not state or imply that a communication otherwise permitted by these rules has been approved by the Tennessee Supreme Court or the Board of Professional Responsibility.~~

~~(3) If a contract for representation is mailed with the communication, the top of each page of the contract shall be marked "SAMPLE" and the words "DO NOT SIGN" shall appear on the client signature line.~~

~~(4) Written communications shall not be in the form of or include legal pleadings or other formal legal documents.~~

~~(5) Communications delivered to potential clients shall be sent only by regular U.S. mail and not by registered, certified, or other forms of restricted delivery, or by express delivery or courier.~~

~~(6) Any communication seeking employment by a specific potential client in a specific matter shall comply with the following additional requirements:~~

~~(i) The communication shall disclose how the lawyer obtained the information prompting the communication;~~

~~(ii) The subject matter of the proposed representation shall not be disclosed on the outside of the envelope (or self-mailing brochure) in which the communication is delivered; and~~

~~(iii) The first sentence of the communication shall state, "IF YOU HAVE ALREADY HIRED OR RETAINED A LAWYER IN THIS MATTER, PLEASE DISREGARD THIS MESSAGE."~~

~~(d) Unless the contents thereof include a solicitation of employment, a lawyer need not comply with the requirements of paragraph (c) above when sending announcements of an association or affiliation with another lawyer that complies with the requirements of RPC 7.5, newsletters, brochures, and other similar communications.~~

### Record Retention

(e) A copy of each written, audio, video, or electronically transmitted communication sent to a specific recipient under this Rule shall be retained by the lawyer for two years after its last dissemination along with a record of when, and to whom, it was sent.

### Paying Others to Recommend a Lawyer

(f) A lawyer shall not compensate, 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 the lawyer's law firm, except that a lawyer may:

(1) pay the reasonable cost of advertisements and other communications permitted by RPC 7.1, including online group advertising;

(2) pay the usual charges of a registered intermediary organization as permitted by RPC 7.6;

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

(4) pay a sponsorship fee or a contribution to a charitable or other non-profit organization in return for which the lawyer will be given publicity as a lawyer; and

(5) 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 reciprocal referral agreement is not exclusive; and

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

### **Comment.**

#### **Solicitation**

[1] ~~A solicitation is a targeted communication initiated by the lawyer that is directed to a specific person and that offers to provide, or can reasonably be understood as offering to provide, legal services. In contrast, a lawyer's communication typically does not constitute a solicitation if it is directed to the general public, such as through a billboard, an Internet~~

banner advertisement, a website, or a television commercial, or if it is in response to a request for information or is automatically generated in response to Internet searches.

[2] “Live person-to-person contact” means in-person, face-to-face, live telephone, and other real-time visual or auditory person-to-person communications where the person is subject to a direct personal encounter without time for reflection. Such person-to-person contact does not include chat rooms, text messages, email, or other written communications that recipients may easily disregard. There is a potential for abuse when a solicitation involves ~~direct live person-to-person contact in-person, live telephone, or real time electronic contact~~ by a lawyer with someone a potential client known to need legal services. ~~These~~ This forms of contact ~~between a lawyer and a potential client subjects the layperson a person~~ to the private importuning of the trained advocate in a direct interpersonal encounter. The person ~~potential client~~, who may already feel overwhelmed by the circumstances giving rise to the need for legal services, may find it difficult to 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 overreaching. ~~The restrictions set forth in this Rule, however, do not apply to efforts by a lawyer to get hired as an in-house counsel by a potential client.~~

[3] ~~This potential for abuse inherent in direct in-person, live telephone, or real time electronic solicitation of potential clients justifies its prohibition, particularly since lawyer advertising and written and recorded communication permitted under this Rule offer alternative means of conveying necessary information to potential clients who may be in need of legal services. Advertising and written and recorded communications which may be mailed or electronically transmitted make it possible for a potential client to be informed about the need for legal services, and about the qualifications of available lawyers and law firms, without subjecting the potential client to direct in-person, live telephone, or real-time electronic persuasion that may overwhelm a person’s judgment.~~

[4] The use of general advertising and written, recorded, or electronic communications to transmit information from lawyer to ~~potential client~~ the public, rather than live person-to-person contact ~~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 RPC 7.1 can be permanently recorded so that they cannot ~~direct in-person, live telephone, or real time electronic conversations between a lawyer and a potential client~~ can 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 RPC 7.1. The contents of live person-to-person communications ~~direct in-person, live telephone, or real time electronic conversations~~ 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. All solicitations permitted under this Rule must comply with the prohibition in RPC 7.1

against false and misleading communications.

[4] [5] There is far less likelihood that a lawyer would engage in abusive practices against a former client, or a person ~~an individual~~ with whom the lawyer has a family, close personal or family ~~prior professional~~ 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 is known to routinely use the type of legal services involved for business purposes. Examples include persons who routinely hire outside counsel to represent the entity; entrepreneurs who regularly engage business, employment law, or intellectual property lawyers; small business proprietors who routinely hire lawyers for lease or contract issues; and other people who routinely retain lawyers for business transactions or formations. Consequently, the general prohibition in paragraph (b) RPC 7.3(a) and the requirements in paragraph of RPC 7.3(c) are not applicable in those situations. Also, paragraph ~~(b) (a)~~ is not intended to prohibit a lawyer from participating in constitutionally protected activities of public or charitable legal-service organizations or bona fide political, social, civic, fraternal, employee, or trade organizations whose purposes include providing or recommending legal services to their its-members or beneficiaries.

[5] [6] But even permitted forms of solicitation can be abused. Thus, any solicitation that contains information which is false or misleading within the meaning of RPC 7.1, which involves coercion, duress, or fraud, harassment within the meaning of paragraph (d)(2), intimidation, overreaching, or undue influence, 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 paragraph (d)(1), or which occurs within thirty (30) days after an accident or disaster involving the individual or a member of the individual's family, is prohibited by ~~RPC 7.3(b)~~. Moreover, if after sending a letter or other communication as permitted by RPC 7.2 the lawyer receives no response, any further effort to communicate with the recipient of the communication ~~potential client~~ may violate the provisions of paragraph (d)RPC 7.3(b)(1). ~~Communications directed to specifically identified recipients must be identified as advertisements, may need to be marked with other disclaimers, and cannot be formatted or delivered in such a manner as to mislead the recipient about the nature of the communication.~~

[6A] RPC 7.3~~(b)~~(3) includes a prohibition against any solicitation of a prospective client within thirty (30) days of the filing of a complaint for divorce or legal separation involving that person, if a significant motive for the solicitation is the lawyer's pecuniary gain. Some divorce or legal separation cases involve either an alleged history of domestic violence or a potential for domestic violence. In such cases, a defendant spouse's receipt of a lawyer's solicitation prior to being served with the complaint can increase the risk of a violent confrontation between the parties before the statutory injunctions take effect. *See* Tenn. Code Ann. § 36-4-106(d) (2014) (imposing specified temporary injunctions, including "[a]n injunction restraining both parties from harassing, threatening, assaulting or abusing the other," that take effect "[u]pon the filing of a petition for divorce or legal separation, and upon personal service of the complaint and summons on the respondent or upon waiver

and acceptance of service by the respondent”) (emphasis added). The prohibition in RPC 7.3(b)(3) against any solicitation within thirty (30) days of the filing of a complaint for divorce or legal separation is intended to reduce any such risk and to allow the plaintiff spouse in such cases to take appropriate steps to seek shelter, an order of protection and/or any other relief that might be available.

[7] This Rule is not intended to prohibit a lawyer from contacting representatives of organizations or groups that may be interested in establishing a group or prepaid legal plan for their members, insureds, beneficiaries, or other third parties for the if the lawyer’s purpose of is to 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 willingness to cooperate with the plan in compliance with RPC 7.6. This form of communication is not directed to people who are seeking legal services for themselves a potential client. 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 potential 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 RPC 7.21.

[8] The requirement in paragraph RPC 7.3(c) that certain communications be marked “Advertising Material” as advertisements and contain other disclaimers does not apply to communications sent in response to requests of potential clients or their spokespersons or sponsors. Nor do those requirements apply to general announcements by lawyers, including changes in personnel or office location, newsletters, brochures, and other similar communications which do not contain a solicitation of professional employment from a client known to be in need of legal services within the meaning of this Rule.

[9] Paragraph (e) of this Rule (e)(6) requires that a lawyer retain a copy of each written, audio, video, or electronically transmitted communication sent to a specific recipient under this Rule for two years after its last dissemination along with a record of the name of the person contacted and the person’s address, telephone number, or telecommunication address to which the communication was sent. If communications identical in content are sent to two or more persons, the lawyer may comply with this requirement by retaining a single copy of the communication together with a list of the names and addresses of the persons to whom the communications were sent.

### **Paying Others to Recommend a Lawyer**

[10] Except as permitted under paragraphs (f)(1)-(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 and this Rule. A communication contains a recommendation if it endorses or vouches for a lawyer’s credentials, abilities, competence, character, or

other professional qualities. Paragraph (f)(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 employees, 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 RPCs 1.5(e) (division of fees) and 5.4 (professional independence of the lawyer), the lead generator's communications are consistent with RPC 7.1 (communications concerning a lawyer's services), and subject to RPC 7.6 and Tenn. Sup. Ct. R. 44 if the lead generator qualifies as an intermediary organization pursuant to RPC 7.6. 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).

[11] A lawyer also may agree to refer clients to another lawyer or a 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 RPCs 2.1 and 5.4(c). Except as provided in RPC 1.5(e), a lawyer who receives referrals from a lawyer or nonlawyer professional must not pay anything solely for the referral, but the lawyer does not violate paragraph (f) of this Rule by agreeing to refer clients to the other lawyer or 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.

## **DEFINITIONAL CROSS-REFERENCES**

“Fraud” See RPC 1.0(d)

“Known” See RPC 1.0(f)

“Written” See RPC 1.0(n)



## **RULE 7.4: COMMUNICATION OF FIELDS OF PRACTICE AND SPECIALIZATION**

[Deleted and Reserved.]

Subject to the requirements of RPCs 7.1, 7.2, and 7.3,

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

~~(b) Except as permitted by paragraphs (c) and (d), a lawyer shall not state that the lawyer is a specialist, specializes, or is certified or recognized as a specialist in a particular field of law.~~

~~(c) 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.~~

~~(d) A lawyer who has been certified as a specialist in a field of law by an organization accredited by the American Bar Association’s House of Delegates, and who has registered such certification with the Tennessee Commission on Continuing Legal Education, may state that the lawyer “is certified as a specialist in [field of law] by [accredited organization].”~~

### **Comment**

~~[1] 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] However, a lawyer may not communicate that the lawyer is a “specialist,” practices a “specialty,” “specializes in” a particular field, or that the lawyer has been recognized or certified as a specialist in a particular field of law, except as provided by this Rule. Recognition of specialization in patent matters is a matter of long-established policy of the Patent and Trademark Office, as reflected in paragraph (c).~~

~~[3] Paragraph (d) permits a lawyer to communicate that the lawyer is a specialist or has been certified or recognized as a specialist when the lawyer has been so certified or recognized by an organization accredited by the American Bar Association’s House of Delegates. However, before a lawyer may communicate that the lawyer is a specialist, the lawyer must first register the specialty certification with the Tennessee Commission on Continuing Legal Education in accordance with Tennessee Supreme Court Rule 21. A lawyer shall not state or imply that the lawyer has received any certification of specialty from the Tennessee Commission on Continuing Legal Education.~~

**~~DEFINITIONAL CROSS-REFERENCES~~**

~~“Substantially” See RPC 1.0(1)~~

## **RULE 7.5: FIRM NAMES AND LETTERHEADS**

[Deleted and Reserved.]

~~(a) A lawyer shall not use a firm name, letterhead, or other professional designation that violates RPC 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 RPC 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 in an office of the firm shall indicate the jurisdictional limitations on those not licensed to practice in the jurisdiction where the office is located.~~

~~(c) The name of a lawyer holding a public office shall not be used in the name of a law firm, or in communications on its behalf, during any substantial period in which the lawyer is not actively and regularly practicing with the firm.~~

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

### **Comment**

~~[1] A firm may be designated by the names of all or some of its members, by the names of deceased or retired 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 not 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 or retired partner is, strictly speaking, a trade name. The use of such names to designate law firms has proven a useful means of identification. However, it is misleading to use the name of a lawyer not associated with the firm or a predecessor of the firm, or the name of a nonlawyer.~~

~~[2] Paragraph (c) does not require a change in a law firm's name or letterhead when a member of the firm interrupts his or her practice to serve, for example, as an elected member of the Tennessee General Assembly so long as the lawyer reasonably expects to resume active and regular practice with the firm at the end of the legislative session. Such a hiatus from practice is not for a substantial period of time. If, however, a lawyer were to curtail his or her practice and enter public service for a longer or indefinite period of time, the lawyer's firm would have to alter its name and letterhead.~~

~~[3] With regard to paragraph (d), lawyers sharing office facilities, but who are not in fact associated with each other in a law firm, may not denominate themselves as, for example, “Smith and Jones,” for that title suggests that they are practicing law together in a firm.~~

~~**DEFINITIONAL CROSS REFERENCES**~~

~~“Firm” and “law firm” See RPC 1.0(e) “Substantial” See RPC 1.0(l)~~

**(End of Appendix A - ADM2020-01505)**

# **ADM2020-01505**

## **APPENDIX B**

### **AMENDED**

**TENN. SUP. CT. R. 8, RPC 7.1, 7.2, 7.3, 7.4, and 7.5**

#### **CHAPTER 7**

##### **INFORMATION ABOUT LEGAL SERVICES**

###### **RULE 7.1: COMMUNICATIONS CONCERNING A LAWYER'S SERVICES**

(a) 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.

(b) Subject to the requirements of paragraph (a) above and RPCs 7.3 and 7.6, a lawyer may advertise services through written, recorded, or electronic communication, including public media. Any communication made under this Rule shall include the name and contact information of at least one lawyer or law firm responsible for its content.

(c) A copy or recording of each advertisement shall be retained by the lawyer for two years after its last dissemination along with a record of when and where the advertisement appeared.

###### **Comment.**

[1] This Rule governs all communications about a lawyer's services. Whatever means are used to make known a lawyer's services, statements about them must be truthful.

[2] Truthful statements that are misleading are also prohibited by this Rule. A truthful statement is misleading if it omits a fact necessary to make the lawyer's communication considered as a whole not materially misleading. A truthful statement is also misleading if there is a substantial likelihood that it will lead a reasonable person to formulate a specific conclusion about the lawyer or the lawyer's services for which there is no reasonable factual foundation.

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

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

[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 risks of practices that are misleading or overreaching.

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

[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.

[8] A lawyer may advertise the fact that a subjective characterization or description has been conferred upon him or her by an organization as long as the organization has made inquiry into the lawyer's fitness and does not issue or confer such designations indiscriminately or for a price.

### **Area of Expertise/Specialization**

[9] 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. However, a lawyer may not communicate that the lawyer is a "specialist," practices a "specialty," "specializes in" a particular field, or that the lawyer has been recognized or certified as a specialist in a particular field of law unless the communication is regarding patent matters or admiralty law or in accordance with paragraph [10] of this Comment. Recognition of specialization in patent matters is a matter of long-established policy of the Patent and Trademark Office. The designation of admiralty practice also has a long historical tradition associated with maritime commerce and the federal courts.

[10] A lawyer is permitted to communicate that the lawyer is a specialist or has been certified or recognized as a specialist when the lawyer has been so certified or recognized by an organization accredited by the American Bar Association's House of Delegates. However, before a lawyer may communicate that the lawyer is a specialist, the lawyer must first register the specialty certification with the Tennessee Commission on Continuing Legal Education in accordance with Tennessee Supreme Court Rule 21. A lawyer shall not state or imply that the lawyer has received any certification of specialty from the Tennessee Commission on Continuing Legal Education.

### **Firm Names**

[11] A firm may be designated by the names of all or some of its members, by the names of deceased or retired 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 not 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 or retired partner is, strictly speaking, a trade name. The use of such names to designate law firms has proven a useful means of identification. However, it is misleading to use the name of a lawyer not associated with the firm or a predecessor of the firm, or the name of a nonlawyer.

[12] It is not necessary to change a law firm’s name or letterhead when a member of the firm interrupts his or her practice to serve, for example, as an elected member of the Tennessee General Assembly, so long as the lawyer reasonably expects to resume active and regular practice with the firm at the end of the legislative session. Such a hiatus from practice is not for a substantial period of time. If, however, a lawyer were to curtail his or her practice and enter public service for a longer or indefinite period of time, the lawyer’s firm would have to alter its name and letterhead.

[13] Lawyers sharing office facilities, but who are not in fact associated with each other in a law firm, may not denominate themselves as, for example, “Smith and Jones,” for that title suggests that they are practicing law together in a firm.

### **Record of Advertising**

[14] Paragraph (c) requires that a lawyer retain a copy or recording of any advertisement for two years after its last dissemination, along with a record of when and where the advertisement appeared. If advertisements that are similar in all material respects are published or displayed more than once or distributed to more than one person, the lawyer may comply with this requirement by retaining a single copy of the advertisement for two years after the last of the materially similar advertisements are disseminated. A lawyer may comply with the requirement of paragraph (b) by complying with guidelines that may be adopted by the Board of Professional Responsibility concerning certain types of advertisements, including websites, email, or other electronic forms of communication or of changes to such communications.

### **Definitional Cross-References**

“Firm” and “Law firm” *See* RPC 1.0(c)

“Fraud” *See* RPC 1.0(d)

“Material” and “materially” *See* RPC 1.0(o)

“Reasonable” *See* RPC 1.0(h)

“Substantial” and “Substantially” *See* RPC 1.0(l)

“Written” *See* RPC 1.0(n)



**RULE 7.2**

**Deleted and Reserved.**

## **RULE 7.3: SOLICITATION OF CLIENTS**

### Solicitation

(a) A solicitation is a targeted communication initiated by or on behalf of a lawyer that is directed to a specific person and that offers to provide, or reasonably can be understood as offering to provide, legal services for a particular matter.

(b) A lawyer shall not solicit by live person-to-person contact, or permit employees or agents of the lawyer to solicit by live person-to-person contact on the lawyer's behalf, professional employment from a potential client when a significant motive for doing so is the lawyer's pecuniary gain, unless the person contacted:

- (1) is a lawyer;
- (2) is a person who routinely uses for business purposes the type of legal services offered by the lawyer;
- (3) is pursuant to a court-ordered class action notification; or
- (4) has a family, close personal, or prior professional relationship with the lawyer.

### Written Solicitation

(c) Every written, recorded, or electronic solicitation by or on behalf of a lawyer seeking professional employment from anyone known to be in need of legal services in a particular matter shall include the words "Advertising Material" on the outside envelope, if any, and at the beginning and ending of any recorded or electronic communication, unless the recipient of the communication is a person specified in paragraphs (b)(1)-(4). The subject matter of the proposed representation shall not be disclosed on the outside of the envelope (or self-mailing brochure) in which the communication is delivered. Unless the contents thereof include a solicitation of employment, a lawyer need not include the words "Advertising Material" when sending announcements of associations or affiliations, newsletters, brochures, and other similar communications.

### Limitation on Solicitation

- (d) A lawyer shall not solicit professional employment from any person if:
- (1) the target of the solicitation has made known to the lawyer a desire not to be solicited by the lawyer; or
  - (2) the solicitation involves coercion, duress, fraud, harassment, intimidation, overreaching, or undue influence; or

- (3) a significant motive for the solicitation is the lawyer's pecuniary gain and the communication concerns an action for personal injury, divorce or legal separation, worker's compensation, wrongful death, or otherwise relates to an accident, filing of divorce or legal separation, or disaster involving the person to whom the communication is addressed or a member of that person's family, unless the accident, filing of divorce or legal separation, or disaster occurred more than thirty (30) days prior to the mailing or transmission of the communication or the lawyer has a family, close personal, or prior professional relationship with the person solicited.

#### Record Retention

- (e) A copy of each written, audio, video, or electronically transmitted communication sent to a specific recipient under this Rule shall be retained by the lawyer for two years after its last dissemination along with a record of when, and to whom, it was sent.

#### Paying Others to Recommend a Lawyer

- (f) A lawyer shall not compensate, 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 the lawyer's law firm, except that a lawyer may:
  - (1) pay the reasonable cost of advertisements and other communications permitted by RPC 7.1, including online group advertising;
  - (2) pay the usual charges of a registered intermediary organization as permitted by RPC 7.6;
  - (3) pay for a law practice in accordance with RPC 1.17;
  - (4) pay a sponsorship fee or a contribution to a charitable or other nonprofit organization in return for which the lawyer will be given publicity as a lawyer; and
  - (5) 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 reciprocal referral agreement is not exclusive; and
    - (ii) the client is informed of the existence and nature of the agreement.

#### Comment.

## **Solicitation**

[1] 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] "Live person-to-person contact" means in-person, face-to-face, live telephone and other real-time visual or auditory person-to-person communications where the person is subject to a direct personal encounter without time for reflection. Such person-to-person contact does not include chat rooms, text messages, email, or other written communications that recipients may easily disregard. There is a potential for abuse when a solicitation involves live person-to-person contact by a lawyer with someone known to need legal services. This form of contact subjects 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 to fully 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 overreaching.

[3] The use of general advertising and written, recorded, or electronic communications to transmit information from lawyer to the public, rather than live person-to-person contact, will help to assure that the information flows cleanly as well as freely. The contents of advertisements and communications permitted under RPC 7.1 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 RPC 7.1. The contents of live person-to-person contact communications 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. All solicitations permitted under this Rule must comply with the prohibition in RPC 7.1 against false and misleading communications.

[4] There is far less likelihood that a lawyer would engage in abusive practices against a former client, or a person with whom the lawyer has a close personal or family relationship, or in situations in which the lawyer is motivated by considerations other than the lawyer's pecuniary gain. Nor is there a serious potential for abuse when the person contacted is a lawyer or is known to routinely use the type of legal services involved for

business purposes. Examples include persons who routinely hire outside counsel to represent the entity; entrepreneurs who regularly engage business, employment law, or intellectual property lawyers; small business proprietors who routinely hire lawyers for lease or contract issues; and other people who routinely retain lawyers for business transactions or formations. Consequently, the general prohibition in paragraph (b) and the requirements in paragraph (c) are not applicable in those situations. Also, paragraph (b) is not intended to prohibit a lawyer from participating in constitutionally protected activities of public or charitable legal service organizations or bona fide political, social, civic, fraternal, employee, or trade organizations whose purposes include providing or recommending legal services to their members or beneficiaries.

[5] But even permitted forms of solicitation can be abused. Thus, any solicitation that contains information which is false or misleading within the meaning of RPC 7.1, which involves coercion, duress, or harassment within the meaning of paragraph (d)(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 paragraph (d)(1), is prohibited. Moreover, if after sending a letter or other communication as permitted by RPC 7.1 the lawyer receives no response, any further effort to communicate with the recipient of the communication may violate the provisions of paragraph (d).

[6] RPC 7.3(d)(3) includes a prohibition against any solicitation of a prospective client within thirty (30) days of the filing of a complaint for divorce or legal separation involving that person, if a significant motive for the solicitation is the lawyer's pecuniary gain. Some divorce or legal separation cases involve either an alleged history of domestic violence or a potential for domestic violence. In such cases, a defendant spouse's receipt of a lawyer's solicitation prior to being served with the complaint can increase the risk of a violent confrontation between the parties before the statutory injunctions take effect. *See* Tenn. Code Ann. § 36-4-106(d) (2014) (imposing specified temporary injunctions, including "[a]n injunction restraining both parties from harassing, threatening, assaulting or abusing the other," that take effect "[u]pon the filing of a petition for divorce or legal separation, and upon personal service of the complaint and summons on the respondent or upon waiver and acceptance of service by the respondent") (emphasis added). The prohibition in RPC 7.3(d)(3) against any solicitation within thirty (30) days of the filing of a complaint for divorce or legal separation is intended to reduce any such risk and to allow the plaintiff spouse in such cases to take appropriate steps to seek shelter, an order of protection, and/or any other relief that might be available.

[7] This Rule is not intended to prohibit a lawyer from contacting representatives of organizations or groups that may be interested in establishing a group or prepaid legal plan for their members, insureds, beneficiaries, or other third parties for the 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 RPC 7.1.

[8] The requirement in paragraph (c) that certain communications be marked "Advertising Material" does not apply to communications sent in response to requests of potential clients or their spokespersons or sponsors. Nor do those requirements apply to general announcements by lawyers, including changes in personnel or office location, newsletters, brochures, and other similar communications which do not contain a solicitation of professional employment from a client known to be in need of legal services within the meaning of this Rule.

[9] Paragraph (e) of this Rule requires that a lawyer retain a copy of each written, audio, video, or electronically transmitted communication sent to a specific recipient under this Rule for two years after its last dissemination along with a record of the name of the person contacted and the person's address, telephone number, or telecommunication address to which the communication was sent. If communications identical in content are sent to two or more persons, the lawyer may comply with this requirement by retaining a single copy of the communication together with a list of the names and addresses of the persons to whom the communications were sent.

### **Paying Others to Recommend a Lawyer**

[10] Except as permitted under paragraphs (f)(1)-(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 and this Rule. A communication contains a recommendation if it endorses or vouches for a lawyer's credentials, abilities, competence, character, or other professional qualities. Paragraph (f)(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 employees, 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 RPCs 1.5(e) (division of fees) and 5.4 (professional independence of the lawyer), the lead generator's communications are consistent with RPC 7.1 (communications concerning a lawyer's services), and subject to RPC 7.6 and Tenn. Sup. Ct. R. 44 if the lead generator qualifies as an intermediary organization pursuant to RPC 7.6. 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).

[11] A lawyer also may agree to refer clients to another lawyer or a 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* RPCs 2.1 and 5.4(c). Except as provided in RPC 1.5(e), a lawyer who receives referrals from a lawyer or nonlawyer professional must not pay anything solely for the referral, but the lawyer does not violate paragraph (f) of this Rule by agreeing to refer clients to the other lawyer or 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.

### **Definitional Cross-References**

“Fraud” *See* RPC 1.0(d)

“Known” *See* RPC 1.0(f)

“Written” *See* RPC 1.0(n)

**RULE 7.4:**

**Deleted and Reserved.**

**RULE 7.5:**

**Deleted and Reserved.**

**(End of Appendix B - ADM2020-01505)**