NEW YORK STATE BAR ASSOCIATION

Report and Recommendations of the **New York State Bar Association Committee on Standards of Attorney Conduct ("COSAC") - Proposed Amendments to Comments to Rules 7.1, 7.2, and 7.3**

October 2026

Approved by the House of Delegates on October 31, 2026.

MEMORANDUM

August 10, 2026

TO: NYSBA Executive Committee and House of Delegates

FROM: Committee on Standards of Attorney Conduct ("COSAC")

SUBJECT: Proposed Amendments to Comments to Rules 7.1, 7.2, and 7.3

Effective June 1, 2026, the Appellate Division adopted revised versions of Rules 7.1 and 7.3 (and deleted former Rule 7.4) in accordance with proposals made by COSAC and adopted by the House of Delegates in 2019 and 2020. The Appellate Division did not adopt a proposed revised version of Rule 7.2 that the House had approved at the same time. The proposed version of Rule 7.2 contained two sets of provisions: (i) paragraphs dealing with payment for referrals, which were criticized when OCA circulated the NYSBA's proposals for public comment;[1] and (ii) provisions dealing with the content of communications regarding a lawyer's services and statements that a lawyer has been "certified as a specialist," which were not criticized during the public comment period. In response to the criticism of the provisions regarding payment for referrals, and in accordance with a proposal by COSAC, the Appellate Division moved the remaining provisions of the proposed Rule 7.2 to Rule 7.1 and did not make any changes to the existing version of New York's Rule 7.2 (which deals only with payment for referrals).

COSAC now offers amendments to the Comments to Rules 7.1, 7.2, and 7.3 to reflect the new organization and titles of the Rules as adopted by the Appellate Division and to reflect certain comments made in response to OCA's invitation for public comments on the NYSBA proposals. The proposed amendments are set forth in legislative style in **Attachment A** hereto.

When the House of Delegates approved proposed amendments to Rules 7.1, 7.2, and 7.3, the House also contingently approved Comments that would go into effect automatically if the Appellate Division adopted the Rules in substantially the form proposed. Insofar as those Comments relate to Rule provisions that the Appellate Division has adopted, the Comments are now in effect and posted on the NYSBA website. (The Comments that were adopted as Comments

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[1] The proposed version of Rule 7.2(b) contained a provision, modeled on ABA Model Rule 7.2, that permitted lawyers to "pay the usual charges of a legal service plan or a not-for-profit or *qualified* lawyer referral service" (emphasis added). In a joint comment on proposed Rule 7.2, three committees of the New York City Bar Association pointed out that there was (and remains) no system for lawyer referral services in New York to become "qualified." On revisiting New York's existing Rule 7.2 in light of this observation, COSAC has concluded that the Rule adequately defines permitted lawyer referral services, and COSAC no longer recommends changes to the text of Rule 7.2 at this time.

to Rule 7.2 and that addressed provisions that are now in Rule 7.1 are now Comments [7] – [10] to Rule 7.1.) The changes proposed herein are to those Comments.

Proposed new Comment [10A] to Rule 7.1

During OCA's public comment period, the New York County Lawyers' Association Ethics Committee urged that the Comments to Rule 7.1 include material along the lines of Comments [6] and [7] to former NY Rule 7.1 stating that public and educational speaking about legal topics is not subject to the requirements of Rule 7.1. The requirements of new Rule 7.1 are much less burdensome than those of the former Rule 7.1, but COSAC agrees that even those less burdensome requirements—such as the requirement of including contact information—should not, and do not, apply to all articles that a lawyer might write on legal topics. Amended Rule 7.1 applies by its terms only to communications "about [a] lawyer or the lawyer's services," so an article purely about a legal topic is not encompassed by the text of amended Rule 7.1. Because this point may not be clear, and in order to provide guidance on the line between educational publications on the one hand and communications about a lawyer's services on the other, COSAC proposes a new Comment [10A] to Rule 7.1 as follows:

> **Educational and informational communications**
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> [10A] Communications that are primarily educational, informational, or social in nature, and which are not disseminated for the primary purpose of obtaining clients for pecuniary gain, fall outside the scope of this Rule. In determining the primary purpose of a communication, a lawyer should consider whether the content is predominantly providing general legal information to the public or is instead predominantly discussing the lawyer or the lawyer's services. For example, a legal alert regarding a change in the law, a blog post analyzing a recent court decision, or a social-media post discussing a legal development, generally would not be subject to the requirements of this Rule unless it directly encouraged the viewer to retain the lawyer. In contrast, a communication setting out the lawyer's experience or successful results in cases in that area of law generally would be subject to the requirements of this Rule even if it mentioned the new law in passing. In any event, all communications, whether primarily educational or primarily for the purpose of obtaining clients for pecuniary gain, are subject to the prohibition on conduct involving dishonesty, fraud, deceit or misrepresentation in Rule 8.4(c)

Proposed amendments to the Comments on Rule 7.2

COSAC proposes several changes to the Comments to Rule 7.2.

First, several current Comments to Rule 7.2 contain cross-references to provisions in Rules 7.1 and 7.3, setting out parenthetical references to the subjects Rules 7.1 and 7.3 or short paraphrases of their provisions. Given that the titles and language of Rules 7.1 and 7.3 have changed, COSAC proposes updating the cross-references to reflect those new provisions. Likewise, COSAC proposes updating certain similar points (*e.g.,* outdated references to "the Code" instead of "the Rules"). These proposed changes, along with certain other clarifications, appear in proposed amended Comments [1A], [3], [5], and [6] to Rule 7.2 in Attachment A hereto.

Second, Comment [1] to Rule 7.2 addresses the prohibition in Rule 7.2(a) barring a lawyer from "compensate[ing] or giv[ing] anything of value to a person or organization to recommend or obtain employment by a client, or as a reward for having made a recommendation resulting in employment by a client." COSAC recommends amending Comment [1] in two ways: (i) to add the phrase "or give anything of value" to the first sentence to more fully track the text of Rule 7.2(a), and (ii) to add a sentence as follows: "A promise to provide something of value, whether or not the promise is ultimately fulfilled, is itself something of value and would likewise be prohibited." The latter change is derived from the language of Rule 7.2 as approved by the House in 2019. That language, which tracks ABA Model Rule 7.2, forbade a lawyer to "promise anything of value to a person for recommending the lawyer's services." Because a promise of something of value fits comfortably in the language of the current text of Rule 7.2, which bars a lawyer from giving "*anything*" of value, we recommend adding new language in Comment [1] to make that point clear. This new language will also serve to clarify that the New York Rule does not depart from the substance of ABA Model Rule 7.2 on this point.

Third, when the NYSBA House of Delegates proposed the revised provisions on payments for referrals in proposed Rule 7.2 in November 2019, the House also approved certain changes to the Comments to the ABA Rule that remain applicable to the current text of the New York Rule. In particular, COSAC suggested, and the House approved, adding in Comment [5] a discussion derived from a State Bar ethics opinion[2] regarding permissible lead generation services. That added discussion provides as follows:

> A lawyer may participate in a for-profit lead generation service if (i) the lawyer is selected by transparent and mechanical methods that do not purport to be based on an analysis of the potential client's legal problem or the qualifications of the selected lawyer to handle that problem, and (ii) the selection of a particular lawyer is not based on whether the selected lawyer pays more than others for inclusion in the service.

As the House has already approved this concept, we recommend including it in a revised Comment [1B] to Rule 7.2, with some clarifying changes and one substantive addition.

The one substantive addition was suggested by the New York City Bar Litigation Committee, which urged in discussions with COSAC that the Comment clarify whether payment to obtain advertising or greater prominence in a lead generation service is payment for selection of the lawyer in the service.[3] COSAC agrees that such a clarification makes sense and proposes adding the following language to Comment [1B]:

> A lawyer's payment of the lead generation service's usual and reasonable fees for advertising via the lead generation service, or a lawyer's payment of the lead generation

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[2] N.Y. State Ethics Op. 1131 (2017).

[3] The Litigation Committee commented: "There are some well-known lawyer marketing 'lists' such as SuperLawyers and Martindale. You do not have to pay to get the recognition for inclusion, but they do give you the option to pay for upgrades such as higher placement in searches, upgraded profiles, and highlighted/larger font for your name in the listings. We are unclear whether these companies qualify as a for-profit lead generation service and if so, whether the comment would be implying that a lawyer cannot pay for this upgraded service."

service's usual and reasonable fees for greater prominence of a lawyer's name (such as a larger font or a listing at the top of a web page), does not constitute payment for "selection" of the lawyer for this purpose.

Fourth, the House in 2019 approved including, in the Comments to Rule 7.2, (i) cross-references to Rule 5.8 that appear in the ABA Comments to ABA Model Rule 7.2 and (ii) certain changes to the language of the ABA Comment. Comment [4] to New York's Rule 7.2 generally tracks the relevant ABA Comment (ABA Comment [8]). We recommend moving those already-approved points into Comment [4].

Proposed new Comment [7A] to Rule 7.3

During the Court's public comment period, certain members of the NYSBA Ethics Committee (speaking in their individual capacities) suggested that several provisions identifying specific prohibited advertising tactics (*e.g.*, portrayals of fictitious law firms), which were included in the text of New York's former Rule 7.1, might usefully be included in the Comments to the new Rules. After due consideration of those proposals, COSAC recommends including a new Comment [7A] to Rule 7.3 (derived from paragraphs (q) and (r) of former Rule 7.1) encouraging lawyers to participate in public education and making clear that a lawyer can accept employment resulting from such efforts. The new proposed Comment reads as follows:

> [7A] A lawyer may also speak publicly or write for publication on legal topics, including communications designed to educate the public to recognize legal problems, to make intelligent selection of counsel, or to better utilize available legal services, so long as the lawyer does not undertake to give individual legal advice and the communications otherwise comply with these Rules. A lawyer may also accept employment that results from participation in such activities.

COSAC also considered incorporating other provisions from former Rule 7.1 into the Comments to Rules 7.1 through 7.3 but concluded that including those provisions would be inconsistent with the action by the House of Delegates (and now by the Appellate Division) to move away, for constitutional and other reasons, from attempts to define specific improper practices in favor of single broad prohibition on misleading conduct. COSAC concluded that the application of that broad prohibition to specific practices is better dealt with in ethics opinions and case law than in Comments of general application.

Attachment A

Proposed Amendments to the Comments to Rules 7.1, 7.2 & 7.3

August 10, 2026

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) A lawyer may communicate information regarding the lawyer's services through any media.

(c) A lawyer shall not state or imply that a lawyer is certified as a specialist in a particular field of law, unless:

(1) the lawyer has been certified as a specialist by an organization that has been approved by an appropriate authority of the state or the District of Columbia or a U.S. Territory or that has been accredited by the American Bar Association; and

(2) the name of the certifying organization is clearly identified in the communication.

(d) Any communication made under this Rule must include the name and contact information of at least one lawyer or law firm responsible for its content.

COMMENT

[1] This Rule governs all communications that a lawyer makes about the lawyer or the lawyer's services, including advertising and including communications to existing clients and to other lawyers. Whatever means are used to make known a lawyer or a lawyer's services, statements about them must be truthful. A lawyer who makes false statements or misrepresentations about the lawyer or the lawyer's services may also be violating Rule 8.4(c), which prohibits conduct involving "dishonesty, fraud, deceit or misrepresentation."

[2] This Rule also prohibits truthful statements that are misleading. A truthful statement is misleading if it omits a fact necessary to make the lawyer's communication considered as a whole not materially misleading. A truthful statement is misleading if a substantial likelihood exists that it will lead a reasonable person to formulate a specific conclusion about the lawyer or the lawyer's services for which there is no reasonable factual foundation. A truthful statement is also misleading if presented in a way that creates a substantial likelihood that a reasonable person would believe the lawyer's communication requires that person to take further action when, in fact, no action is required.

[3] A communication 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 claim about a lawyer's or law firm's services or fees, or an unsubstantiated comparison of the lawyer's or law firm's services or fees with those of other lawyers or law firms, may be misleading if presented with such specificity as would lead a reasonable person to conclude that the comparison or claim 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. Rule 8.4(c). *See also* Rule 8.4(e) for the prohibition against stating or implying an ability to improperly influence a government agency or official or to achieve results by means that violate the Rules of Professional Conduct or other law.

[5] A law firm's name, trade name, domain name, web site, social media pages, office sign, business cards, letterhead, and professional designations are communications concerning a lawyer's services and must not be false, deceptive, or misleading. They must also comply with Rule 7.5, which treats those forms of communication in detail.

[6] This Rule permits public dissemination of information concerning a lawyer's or law firm's 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.

Communications about Fields of Practice

[7] Paragraph (c) of this Rule permits a lawyer to communicate that the lawyer does or does not practice in particular areas of law. A lawyer is generally permitted to state that the lawyer "concentrates in" or is a "specialist," practices a "specialty," or "specializes in" particular fields based on the lawyer's experience, specialized training or education, but such communications are subject to the "false and misleading" standard applied in Rule 7.1 to communications concerning a lawyer's services.

[8] The Patent and Trademark Office has a long-established policy of designating lawyers practicing before the Office. The designation of Admiralty practice also has a long historical tradition associated with maritime commerce and the federal courts. A lawyer's communications about these practice areas are not prohibited by this Rule.

[9] This Rule permits a lawyer to 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 authority of a state, the District of Columbia, or a U.S. Territory, or accredited by the American Bar Association or another organization, such as a state supreme court or a state bar association, that has been approved by the authority of the state, the District of Columbia, or a U.S. Territory 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 ensure that a lawyer's recognition as a specialist is meaningful and reliable. To ensure 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.

Required Contact Information

[10] This Rule requires that any communication about a lawyer or law firm's services include the name of, and contact information for, the lawyer or law firm. Contact information should always include a telephone number or a physical office address, and may also include a website address, an email address, and other contact information that may be helpful to clients and potential clients.

Educational and informational communications

[10A] Communications that are primarily educational, informational, or social in nature, and which are not disseminated for the primary purpose of obtaining clients for pecuniary gain, fall outside the scope of this Rule. In determining the primary purpose of a communication, a lawyer should consider whether the content predominantly provides general legal information to the public or instead predominantly discusses the lawyer or the lawyer's services. For example, a legal alert regarding a change in the law, a blog post analyzing a recent court decision, or a social-media post discussing a legal development, generally would not be subject to the requirements of this Rule unless it directly encouraged the viewer to retain the lawyer. In contrast, a communication setting out the lawyer's experience or successful results in cases in that area of law generally would be subject to the requirements of this Rule even if it mentioned the new law in passing. In any event, all communications, whether primarily educational or primarily for the purpose of obtaining clients for pecuniary gain, are subject to the prohibition on conduct involving dishonesty, fraud, deceit or misrepresentation in Rule 8.4(c).

RULE 7.2
PAYMENT FOR REFERRALS

(a) A lawyer shall not compensate or give anything of value to a person or organization to recommend or obtain employment by a client, or as a reward for having made a recommendation resulting in employment by a client, except that:

(1) a lawyer or law firm may refer clients to a nonlegal professional or nonlegal professional service firm pursuant to a contractual relationship with such nonlegal professional or nonlegal professional service firm to provide legal and other professional services on a systematic and continuing basis as permitted by Rule 5.8, provided however that such referral shall not otherwise include any monetary or other tangible consideration or reward for such, or the sharing of legal fees; and

(2) a lawyer may pay the usual and reasonable fees or dues charged by a qualified legal assistance organization or referral fees to another lawyer as permitted by Rule 1.5(g).

(b) A lawyer or the lawyer's partner or associate or any other affiliated lawyer may be recommended, employed or paid by, or may cooperate with one of the following offices or organizations that promote the use of the lawyer's services or those of a partner or associate or any other affiliated lawyer, or request one of the following offices or organizations to recommend or promote the use of the lawyer's services or those of the lawyer's partner or associate, or any other affiliated lawyer as a private practitioner, if there is no interference with the exercise of independent professional judgment on behalf of the client:

(1) a legal aid office or public defender office:

(i) operated or sponsored by a duly accredited law school;

(ii) operated or sponsored by a bona fide, non-profit community organization;

(iii) operated or sponsored by a governmental agency; or

(iv) operated, sponsored, or approved by a bar association;

(2) a military legal assistance office;

(3) a lawyer referral service operated, sponsored or approved by a bar association or authorized by law or court rule; or

(4) any bona fide organization that recommends, furnishes or pays for legal services to its members or beneficiaries provided the following conditions are satisfied:

(i) Neither the lawyer, nor the lawyer's partner, nor associate, nor any other affiliated lawyer nor any nonlawyer, shall have initiated or promoted such organization for the primary purpose of providing financial or other benefit to such lawyer, partner, associate or affiliated lawyer;

(ii) Such organization is not operated for the purpose of procuring legal work or financial benefit for any lawyer as a private practitioner outside of the legal services program of the organization;

(iii) The member or beneficiary to whom the legal services are furnished, and not such organization, is recognized as the client of the lawyer in the matter;

(iv) The legal service plan of such organization provides appropriate relief for any member or beneficiary who asserts a claim that representation by counsel furnished, selected or approved by the organization for the particular matter involved would be unethical, improper or inadequate under the circumstances of the matter involved; and the plan provides an appropriate procedure for seeking such relief;

(v) The lawyer does not know or have cause to know that such organization is in violation of applicable laws, rules of court or other legal requirements that gov ern its legal service operations; and

(vi) Such organization has filed with the appropriate disciplinary authority, to the extent required by such authority, at least annually a report with respect to its legal service plan, if any, showing its terms, its schedule of benefits, its subscription charges, agreements with counsel and financial results of its legal service activities or, if it has failed to do so, the lawyer does not know or have cause to know of such failure.

COMMENT

Paying Others to Recommend a Lawyer

[1] Except as permitted under paragraphs (a)(1)-(a)(2) of this Rule or under Rule 1.17, lawyers are not permitted to pay others or give anything of value for recommending the lawyer's services or for channeling professional work in a manner that would violate Rule 7.3 if engaged in by a lawyer. See Rule 8.4(a) (lawyer may not violate or attempt to violate a Rule, knowingly assist another to do so, or do so through the acts of another). A promise to provide something of value, whether or not the promise is ultimately fulfilled, is itself something of value and would likewise be prohibited. A communication contains a "recommendation" if it endorses or vouches for a lawyer's credentials, abilities, competence, character, or other professional qualities. Paragraph (a), however, does not

prohibit a lawyer from paying for advertising and communications permitted by these Rules, including the costs of printing directory listings and newspaper ads, television and radio airtime, domain-name registrations, sponsorship fees, Internet-based advertisements, search engine optimization, and group advertising. A lawyer may also compensate employees, agents and vendors who are engaged to provide marketing or client development services, such as publicists, public-relations personnel, marketing personnel, business development staff and website designers.

[1A] ~~Moreover a~~A lawyer may pay others for generating client leads, such as Internet-based client leads, as long as (i) the lead generator does not recommend the lawyer, (ii) any payment to the lead generator is consistent with Rules 1.5(g) (division of fees) and 5.4 (professional independence of the lawyer), (iii) the lawyer complies with Rule 1.8(f) (prohibiting interference with a lawyer's independent professional judgment by a person who recommends the lawyer's services), and (iv) the lead generator's communications are consistent with Rule~~s~~ 7.1 (~~advertising~~communications concerning a lawyer's services) and Rule 7.3 (solicitation of clients~~and recommendation of professional employment~~).

[1B] 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. A lawyer may participate in a for-profit lead generation service if (i) the lawyer is selected by the lead generation service through transparent and mechanical methods that do not purport to be based on an analysis of the potential client's legal problem or the qualifications of the selected lawyer to handle that problem, and (ii) the lead generation service's selection of a particular lawyer is not based on whether the selected lawyer pays more than others for inclusion in the service. *See* Comment [1] (defining "recommendation"). A lawyer's payment of the lead generation service's usual and reasonable fees for advertising via the lead generation service, or a lawyer's payment of the lead generation service's usual and reasonable fees for greater prominence of a lawyer's name (such as a larger font or a listing at the top of a web page), does not constitute payment for "selection" of the lawyer for this purpose. *See also* Rule 5.3 (lawyer's responsibility for conduct of nonlawyers); Rule 8.4(a) (duty to avoid violating the Rules through the acts of another).

[2] A lawyer may pay the usual charges of a qualified legal assistance organization. A lawyer so participating should make certain that the relationship with a qualified legal assistance organization in no way interferes with independent professional representation of the interests of the individual client. A lawyer should avoid situations in which officials of the organization who are not lawyers attempt to direct lawyers concerning the manner in which legal services are performed for individual members and should also avoid situations in which considerations of economy are given undue weight in determining the lawyers employed by an organization or the legal services to be performed for the member or beneficiary, rather than competence and quality of service.

[3] A lawyer who accepts assignments or referrals from a qualified legal assistance organization must act reasonably to ensure that the activities of the plan or service are

compatible with the lawyer's professional obligations. *See* Rule 5.3. The lawyer must ensure that the organization's communications with potential clients are in conformity with these Rules. For example, the organization's advertising must not be false or misleading, as would be the case if the organization's communications falsely suggested that it was a lawyer referral service sponsored by a state agency or bar association. Nor could the lawyer allow ~~in-~~ live person-to-person~~, telephonic or real-time interactive electronic~~ contact~~s~~ that would violate Rule 7.3.

[4] A lawyer also may agree to refer clients to another lawyer or a nonlawyer in return for the undertaking of that person to refer clients or customers to the lawyer – see Rule 5.8(c). 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~~g), a lawyer who receives referrals from a lawyer or nonlawyer must not pay anything solely for the referral, but the lawyer does not violate paragraph (a) by agreeing to refer clients to the other lawyer or nonlawyer so long as (i) the reciprocal referral agreement is not exclusive ~~and~~ – *see* Rule 5.8(c) – and (ii) the client is informed of the referral agreement. A lawyer may enter into such an arrangement only if it is nonexclusive on both sides, so that both the lawyer and the nonlawyer are free to refer clients to others if that is in the best interests of those clients. ~~Conflicts~~Any conflicts of interest created by such arrangements are governed by Rule 1.7. A lawyer must not permit the lawyer's financial interest in receiving a steady stream of referrals from a particular source ~~must not undermine~~to adversely affect the lawyer's professional judgment on behalf of clients – *see* Rule 1.7(a)(2). 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 comprising multiple entities.~~

[5] Campaign contributions by lawyers to government officials or candidates for public office who are, or may be, in a position to influence the award of a legal engagement may threaten governmental integrity by subjecting the recipient to a conflict of interest. Correspondingly, when a lawyer makes a significant contribution to a public official or an election campaign for a candidate for public office and is later engaged by the official to perform legal services for the official's agency, it may appear that the official has been improperly influenced in selecting the lawyer, whether or not this is so. This appearance of influence reflects poorly on the integrity of the legal profession and government as a whole. For these reasons, just as the ~~Code~~Rules prohibit~~s~~ a lawyer from compensating or giving anything of value to a person or organization to recommend or obtain employment by a client, the ~~Code~~Rules prohibit~~s~~ a lawyer from making or soliciting a political contribution to any candidate for government office, government official, political campaign committee or political party, if a disinterested reasonable person would conclude that the contribution is being made or solicited for the purpose of obtaining or being considered eligible to obtain a government legal engagement. This would be true even in the absence of an understanding between the lawyer and any government official or candidate that special consideration will be given in return for the political contribution or solicitation.

[6] In determining whether a disinterested reasonable person would conclude that a contribution to a candidate for government office, government official, political campaign committee or political party is or has been made for the purpose of obtaining or being considered eligible to obtain a government legal engagement, the factors to be considered include (a) whether legal work awarded to the contributor or solicitor, if any, was awarded pursuant to a process that was insulated from political influence, such as a "Request for Proposal" process, (b) the amount of the contribution or the contributions resulting from a solicitation, (c) whether the contributor or any law firm with which the lawyer is associated has sought or plans to seek government legal work from the official or candidate, (d) whether the contribution or solicitation was made because of an existing personal, family or non-client professional relationship with the government official or candidate, (e) whether prior to the contribution or solicitation in question, the contributor or solicitor had made comparable contributions or had engaged in comparable solicitations on behalf of governmental officials or candidates for public office for which the lawyer or any law firm with which the lawyer is associated did not perform or seek to perform legal work, (f) whether the contributor has made a contribution to the government official's or candidate's opponent(s) during the same campaign period and, if so, the amounts thereof, and (g) whether the contributor is eligible to vote in the jurisdiction of the governmental official or candidate, and if not, whether other factors indicate that the contribution or solicitation was nonetheless made to further a genuinely held political, social or economic belief or interest rather than to obtain a legal engagement.

RULE 7.3
SOLICITATION OF CLIENTS

(a) "Solicitation" or "solicit" denotes a communication initiated by or on behalf of a lawyer or law firm that is directed to a specific person the lawyer knows or reasonably should know needs legal services in a particular matter and that offers to provide, or reasonably can be understood as offering to provide, legal services for that matter.

(b) A lawyer shall not solicit professional employment by live person-to-person contact when a significant motive for the lawyer's doing so is the lawyer's or law firm's pecuniary gain, unless the contact is with:

(1) a lawyer;

(2) a person who has a family, close personal, or prior business or professional relationship with the lawyer or law firm; or

(3) a person who routinely uses for business purposes the type of legal services offered by the lawyer.

(c) A lawyer shall not solicit professional employment even when not otherwise prohibited by paragraph (a), 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 or harassment.

(d) This Rule does not prohibit communications authorized by law or ordered by a court or other tribunal.

(e) Notwithstanding the prohibitions in this Rule, 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 live person-to-person contact to enroll members or sell subscriptions for the plan from persons who are not known to need legal services in a particular matter covered by the plan.

COMMENT

[1] Paragraph (b) prohibits a lawyer from soliciting professional employment by live person-to-person contact when a significant motive for the lawyer's doing so is the lawyer's or the law firm's pecuniary gain. A lawyer's communication is 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 electronic 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 text messages, or other written communications that recipients may easily disregard. A potential for overreaching exists when a lawyer, seeking pecuniary gain, solicits a person known to be in need of 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 an immediate response. The situation is fraught with the possibility of undue influence, intimidation, and overreaching.

[3] The potential for overreaching inherent in live person-to-person contact justifies its prohibition, since lawyers have alternative means of conveying necessary information. In particular, communications can be mailed or transmitted by email or other electronic means that do not violate other laws. These forms of communications 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 live person-to-person persuasion that may overwhelm a person's judgment.

[4] The contents of live person-to-person 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] There is far less likelihood that a lawyer would engage in overreaching against a former client, or a person with whom the lawyer has a close personal, family, business or 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 overreaching 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. 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 their members or beneficiaries.

[6] A solicitation that contains false or misleading information within the meaning of Rule 7.1, that involves coercion, duress or harassment within the meaning of Rule 7.3(c)(2), or that 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(c)(1), is prohibited. Live, person-to-person contact of individuals who may be especially vulnerable to coercion or duress is ordinarily not appropriate, for example, the elderly, those whose first language is not English, or the disabled.

[7] This Rule does not 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 7.1.

[7A] A lawyer may also speak publicly or write for publication on legal topics, including communications designed to educate the public to recognize legal problems, to make intelligent selection of counsel or to better utilize available legal services, so long as the lawyer does not undertake to give individual legal advice and the communications otherwise comply with these Rules. A lawyer may also accept employment that results from participation in such activities.

[8] Communications authorized by law or ordered by a court or tribunal include a notice to potential members of a class in class action litigation.

[9] Paragraph (e) of this Rule permits a lawyer to participate with an organization which uses personal contact to enroll 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 (e) would not permit a lawyer to create an organization controlled directly or indirectly by the lawyer and use the organization for the person-to-person solicitation of legal employment of the lawyer through memberships in the plan or otherwise. The communication permitted by these organizations must not be directed to a person known to need legal services in a particular matter, but must 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(c).