

IN THE SUPREME COURT, STATE OF WYOMING

OCTOBER TERM, A.D. 1996

IN THE SUPREME COURT
STATE OF WYOMING
FILED

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In the Matter of Amendments to Rules 7.1, 7.2, 7.3, and 7.4
of the RULES OF PROFESSIONAL CONDUCT FOR ATTORNEYS AT LAW

)
) *Judy Pacheco*
JUDY PACHECO, CLERK

**ORDER AMENDING RULES 7.1, 7.2, 7.3, and 7.4
RULES OF PROFESSIONAL CONDUCT FOR ATTORNEYS AT LAW**

The Board of Bar Commissioners, having submitted to the Court proposed amendments to Rules 7.1, 7.2, 7.3, and 7.4, RULES OF PROFESSIONAL CONDUCT FOR ATTORNEYS AT LAW, as attached hereto, and the court having reviewed the proposed amendments and finding that the proposed amendments should be adopted; it is therefore,

ORDERED that the amendments to Rules 7.1, 7.2, 7.3, and 7.4, RULES OF PROFESSIONAL CONDUCT FOR ATTORNEYS AT LAW, as attached hereto, shall be, and they are hereby, adopted by the court; and it is further,

ORDERED that said amended rules be published in the advance sheets of the Pacific Reporter and the Wyoming Reporter and shall become effective 60 days after their publication in the advance sheets of the Pacific Reporter; and shall thereupon be spread at length upon the journal of this court.

Dated this 3rd day of December, 1996.

BY THE COURT:

William A. Taylor
William A. Taylor
Chief Justice

Rule 7.1 Communications eConcerning a hLawyer's sServices.

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:

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

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

(c) compares the lawyer's services with other specific lawyers' services, unless the comparison can be factually substantiated; or

(d) contains a dramatization precluded by Rule 7.2(g), a testimonial or endorsement.

Comment. — This Rule governs all communications about a lawyer's services, including advertising permitted by Rule 7.2. Whatever means are used to make known a lawyer's services, statements about them should be truthful. The prohibition in paragraph (b) of statements that may create "unjustified expectations" would ordinarily preclude advertisements about results obtained on behalf of a client, such as the amount of a damage award or the lawyer's record in obtaining favorable verdicts, and advertisements containing client endorsements. Such information may create the unjustified expectation that similar results can be obtained for others without reference to the specific factual and legal circumstances.

— For case note, "Lawyer Advertising and Solicitation — Justifying Restrictions on Lawyers' Speech. Florida Bar v. Went For It, Inc., 155 S. Ct. 2371 (1995)", see XXXI Land & Water 231 (1996).

Rule 7.2 Advertising.

(a) Subject to the requirements of Rule 7.1, a lawyer may advertise services. The services may be advertised through public media, such as a telephone directory, Internet, legal directory, newspaper or other periodical, outdoor sign or billboard, radio or television, or through written or electronic communication. Advertisements shall not involve solicitation as defined in Rule 7.3.

(b) A copy or recording of an advertisement or written or electronic communication shall be kept retained by the lawyer or law firm for two (2) years from the date of after its last dissemination, along together with a record of when and where it was used.

~~(c) A lawyer shall not give anything of value to a person for recommending the lawyer's services, except that a lawyer may pay the reasonable cost of advertising or written communication permitted by this Rule and may pay the usual charges of a not-for-profit lawyer referral service or other legal service organization. Any of the following information in advertisements and written or electronic communications shall be presumed to be in compliance with the provisions of Rule 7.1, and the disclaimer required by Rule 7.2(g) need not be included.~~

(1) Subject to the requirements of Rule 7.1 and Rule 7.2, the name of the lawyer or law firm, a listing of lawyers associated with the firm, office addresses and telephone numbers, and facsimile number. E-mail addresses, office and telephone service hours, and a designation such as "attorney" or "law firm."

(2) Date of admission to the Wyoming State Bar and other bars and a listing of federal courts and jurisdictions other than Wyoming where the lawyer is licensed to practice.

(3) Technical and professional licenses granted by the state or other recognized licensing authorities.

(4) Foreign language ability.

(5) Prepaid or group legal service plans in which the lawyer participates.

(6) Acceptance of credit cards.

(7) Fee for initial consultation and fee schedule, subject to the requirements of Rule 7.2(j).

(8) A listing of the name and geographic location of a lawyer or law firm as a sponsor of a public service announcement or charitable, civic or community program or event.

(d) ~~Any communication made pursuant to this Rule shall include the name of at least one (1) lawyer responsible for its content.~~ A lawyer shall not give anything of value to a person for recommending the lawyer's services, except a lawyer may pay the reasonable cost of the advertisement or written or electronic communication permitted by Rule 7.2. A lawyer may also pay the usual charges of a not-for profit lawyer service or other legal service organization.

(e) Any advertisement made pursuant to Rule 7.2 shall include the name of at least one (1) lawyer responsible for its content.

(f) Advertisements on electronic media such as television, radio and the Internet may contain the same factual information and illustrations as permitted in advertisements in the print media. The information shall be articulated by a voice, with no background sound or other instrumental music. The voice shall not be that of a celebrity whose voice is recognizable by the public. If a person appears as a lawyer in an advertisement for legal services, or under such circumstance as may give the impression that the person is a lawyer, such person must be a member of the Wyoming State Bar, admitted to practice and in good standing before the Wyoming Supreme Court and must be the lawyer who will actually perform the service advertised or a lawyer associated with the law firm which is advertising. If a person appears in an advertisement as an employee of a lawyer or law firm, such person must be an actual employee of the lawyer or law firm whose services are

advertised, unless the advertisement disclosed such person as an actor. If an actor appears in any other role not prohibited by these rules, the advertisement must disclose such person is an actor.

(g) Any advertisement containing information in addition to that set forth in Rule 7.2(c) shall contain the following disclaimer:

The Wyoming State Bar does not certify any lawyer as a specialist or expert. Anyone considering a lawyer should independently investigate the lawyer's credentials and ability, and not rely upon advertisements or self-proclaimed expertise.

The disclaimer must appear within the advertisement itself, or in the instance of a telephone or other directory, upon the same or the facing page as the advertisement appears. The disclaimer shall be in a type size at least as large as the smallest type size appearing in the advertisement.

(h) A lawyer's advertisement, regardless of medium, must provide useful, factual information presented in a non-sensational manner. There shall be no testimonials or endorsements in any advertisement in any medium. There shall be no dramatizations which use scenes creating suspense, scenes containing exaggerations of situations calling for legal services, or scenes creating consumer problems through characterization and dialogue ending with the lawyer solving the problem.

(i) Illustrations used in advertisements shall present information which can be factually substantiated. Provided the scenes do not unduly appeal to any emotion or passion, permitted illustrations include scenes such as a lawyer working behind a desk, consulting with another attorney, working in the library, climbing courthouse steps, or other similar scenes reflecting activities commonly performed by lawyers.

(j) For all advertisements contracted or ordered after the effective date of Rule 7.2, a lawyer who advertises a specific fee or range of fees for a particular service shall honor the advertised fee or range of fees for at least ninety (90) days from the last date of advertisement unless the advertisement specifies a shorter

period. For advertisements in the yellow pages of telephone directories or other media published not more frequently than annually, the advertised fee or range of fees shall be honored for no less than one (1) year following the date of publication.

(k) A lawyer shall not make false, exaggerated or misleading statements describing or characterizing the quality of the lawyer's services in advertisements and written or electronic communications.

(l) A lawyer shall not advertise services under a name that violates the provisions of Rule 7.4.

(m) Nothing in Rule 7.2 prohibits a lawyer or law firm from the inclusion in reputable law lists and law directories, intended primarily for the use of the legal profession, such information as has been traditionally been included in such lists or directories.

(n) This rule shall not apply to public service advertisements disseminated by the Wyoming State Bar, Wyoming Trial Lawyers, or other non-profit associations.

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

[2] This Rule permits public dissemination of information concerning a lawyer's name or firm name, address and telephone number; the kinds of services the lawyer will undertake; the basis on which the lawyer's fees are determined, including prices for specific services and payment and credit arrangements; a

lawyer's foreign language ability; names of references and, with their consent, names of clients regularly represented; and other information that might invite the attention of those seeking legal assistance.

[3] Questions of effectiveness and taste in advertising are matters of speculation and subjective judgment. Some jurisdictions have had extensive prohibitions against television advertising, against advertising going beyond specified facts about a lawyer, or against "undignified" advertising. Television is now one (1) of the most powerful media for getting information to the public, particularly persons of low and moderate income; prohibiting television 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.

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

Record of Advertising. [5] Paragraph (b) requires that a record of the content and use of advertising be kept in order to facilitate enforcement of this Rule. It does not require that advertising be subject to review prior to dissemination. Such a requirement would be burdensome and expensive relative to its possible benefits, and may be of doubtful constitutionality.

Paying Others to Recommend a Lawyer. [6] A lawyer is allowed to pay for advertising permitted by this Rule, but otherwise is not permitted to pay another person for channeling professional work. 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.

— For article, "Legal Service Advertising: Wyoming Attorney Attitudes Compared with Wyoming Consumer Attitudes," see XVII Land & Water L. Rev. 209 (1982).

— For case note, “Lawyer Advertising and Solicitation — Justifying Restrictions on Lawyers’ Speech. Florida Bar v. Went For It, Inc., 155 S. Ct. 2371 (1995),” see XXXI Land & Water 231 (1996).

Rule 7.3 ~~Direct contact with prospective clients.~~ Solicitation or Communication with Prospective Clients.

~~A lawyer may not solicit professional employment from a prospective client with whom the lawyer has no family or prior professional relationship, by mail, in person or otherwise, when a significant motive for the lawyer’s doing so is the lawyer’s pecuniary gain. The term “solicit” includes contact in person, by telephone or telegraph, by letter or other writing, or by other communication directed to a specific recipient, but does not include letters addressed or advertising circulars distributed generally to persons not known to need legal services of the kind provided by the lawyer in a particular matter, but who are so situated that they might in general find such services useful.~~

(a) **Direct contact with prospective clients.** Except as permitted by Rule 7.3(b) and (c), no lawyer shall solicit professional employment from a prospective client with whom the lawyer has no family or prior professional relationship. The term “solicit” includes any contact in person, contact through a third party at the direction of the lawyer, by telephone, telegraph or facsimile, by mail or other writing, electronic communication or by any other means of communication.

(b) **Direct advertising or communication.** Any direct written or electronic communication or advertisement distributed to persons not specifically known to need legal services as a result of a particular specific transaction or occurrence, but who are so situated that they might, in general, find the services of the type provided by the lawyer useful, shall contain the disclaimer required by Rule 7.2(g). In addition, “Notice: This is an advertisement” shall appear on the first page, in bold print, in a type size and legibility sufficient to be conspicuous and a size at least as large as the smallest of any type size appearing in the direct written or electronic communication or advertisement.

(c) **Target communication to prospective clients.** Any contact in person, contact through a third party at the direction of the lawyer, by telephone, telegraph

or facsimile, by mail or other writing, electronic communication or by any other means of communication directed to a specific prospective client with whom the lawyer has no family or prior professional relationship, who may need legal services due to a particular specific transaction or occurrence, is prohibited within thirty (30) days of the transaction or occurrence. After the thirty (30) days have elapsed exclusive of the day of the transaction or occurrence, written communication may be directed to a specific prospective client, but such written communication must comply with Rule 7.1 and 7.3(b).

Comment. — [1] There is a potential for abuse inherent in direct solicitation by a lawyer of prospective clients known to need legal services. It subjects the lay person to the private importuning of a trained advocate, in a direct interpersonal encounter. A prospective client often feels overwhelmed by the situation giving rise to the need for legal services, and may have an impaired capacity for reason, judgment and protective self-interest. Furthermore, the lawyer seeking the retainer is faced with a conflict stemming from the lawyer's own interest, which may color the advice and representation offered the vulnerable prospect.

[2] The situation is therefore fraught with the possibility of undue influence, intimidation, and over-reaching. This potential for abuse inherent in direct solicitation of prospective clients justifies its prohibition, particularly since lawyer advertising permitted under Rule 7.2 offers an alternative means of communicating necessary information to those who may be in need of legal services.

[3] Advertising makes it possible for a prospective client to be informed about the need for legal services, and about the qualifications of available lawyers and law firms, without subjecting the prospective client to direct personal persuasion that may overwhelm the client's judgment.

[4] The use of general advertising to transmit information from lawyer to prospective client, rather than direct private contact, will help to assure that the information flows cleanly as well as freely. Advertising is out in public view, thus subject to scrutiny by those who know the lawyer. This informal review is itself likely to help guard against statements and claims that might constitute false or misleading communications, in violation of Rule 7.1. Direct, private communications from a lawyer to a prospective client are not subject to such third-party scrutiny and consequently are much more likely to approach (and

occasionally cross) the dividing line between accurate representations and those that are false and misleading.

[5] These dangers attend direct solicitation whether in-person or by mail. Direct mail solicitation cannot be effectively regulated by means less drastic than outright prohibition. One proposed safeguard is to require that the designation "Advertising" be stamped on any envelope containing a solicitation letter. This would do nothing to assure the accuracy and reliability of the contents. Another suggestion is that solicitation letters be filed with a state regulatory agency. This would be ineffective as a practical matter. State lawyer discipline agencies struggle for resources to investigate specific complaints, much less for those necessary to screen lawyers' mail solicitation material. Even if they could examine such materials, agency staff members are unlikely to know anything about the lawyer or about the prospective client's underlying problem. Without such knowledge they cannot determine whether the lawyer's representations are misleading. In any event, such review would be after the fact, potentially too late to avert the undesirable consequences of disseminating false and misleading material.

[6] General mailings not speaking to a specific matter do not pose the same danger of abuse as targeted mailings, and therefore are not prohibited by this Rule. The representations made in such mailings are necessarily general rather than tailored, less importuning than informative. They are addressed to recipients unlikely to be specially vulnerable at the time, hence who are likely to be more skeptical about unsubstantiated claims. General mailings not addressed to recipients involved in a specific legal matter or incident, therefore, more closely resemble permissible advertising rather than prohibited solicitation.

[7] Similarly, this Rule would not prohibit a lawyer from contacting representatives of organizations or groups that may be interested in establishing a group or prepaid legal plan for its members, insureds, beneficiaries or other third parties for the purpose of informing such entities of the availability of and details concerning the plan or arrangement which he or his firm is willing to offer. This form of communication is not directed to a specific prospective client known to need legal services related to a particular matter. Rather, it is usually addressed to an individual acting in a fiduciary capacity seeking a supplier of legal services for others who may, if they choose, become prospective clients of the lawyer. Under these circumstances, the activity which the lawyer undertakes in communicating

with such representatives and the type of information transmitted to the individual are functionally similar to and serve the same purpose as advertising permitted under Rule 7.2.

Rule 7.4 Firm nNames and hLetterheads.

(a) A lawyer shall not use a firm name, letterhead or other professional designation that violates Rule 7.1. A trade name may be used by a lawyer in private practice if it does not imply a connection with a government agency, ~~or with a public or charitable legal services organization~~ and is not otherwise in violation of Rule 7.1.

(b) A law firm with offices in more than one (1) jurisdiction may use the same firm name in each such 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.~~ However, the firm shall indicate the jurisdictional limitations of each lawyer 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~~ during 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.~~ Lawyers shall clearly and accurately state the organizational structure of the organization in which they practice. Lawyers may not state or imply that they practice in a partnership, firm or other organization if that is not the fact. If lawyers use a name or designation that implies they are practicing in a partnership, firm or other organization, when, in fact, they are not, adding a disclaimer such as “not a partnership” or “an association of sole practitioners” shall not render the name or designation permissible under Rule 7.4.

Comment. — [1] A firm may be designated by the names of all or some of its members, by the names of deceased members where there has been a continuing succession in the firm’s identity or by a trade name such as the “ABC Legal Clinic.” Although the United States Supreme Court has held that legislation may prohibit

the use of trade names in professional practice, use of such names in law practice is acceptable so long as it is not misleading. If a private firm uses a trade name that includes a geographical name such as "Springfield Legal Clinic," an express disclaimer that it is a public legal aid agency may be required to avoid a misleading implication. It may be observed that any firm name including the name of a deceased partner is, strictly speaking, a trade name. The use of such names to designate law firms has proven a useful means of identification. However, it is misleading to use the name of a lawyer not associated with the firm or a predecessor of the firm.

[2] With regard to paragraph (d), lawyers sharing office facilities, but who are not in fact partners, may not denominate themselves as, for example, "Smith and Jones," for that title suggests partnership in the practice of law.