

MEMORANDUM

To: WSBA President, President-elect, Immediate Past President, and Board of Governors
From: WSBA Committee on Professional Ethics (CPE)
Date: January 5, 2018
Re: Report and Recommendation on the Lawyer Advertising Ethics Rules

FIRST READING: Report and Recommendation regarding Proposed Amendments to Lawyer Advertising Rules (RPC Title 7)

I. OVERVIEW

In early 2016, the Board of Governors (BOG) convened a workgroup to explore and report back to the BOG regarding possible amendments to the rules governing lawyer advertising and communications in Title 7 of the Rules of Professional Conduct. The impetus for formation of the workgroup was publication of the Association of Professional Responsibility Lawyers (APRL) 2015 Report of the Regulation of Lawyer Advertising Committee (2015 Report) [See BOG Public Session Supplemental [Supp.] Materials]. The membership of the Advertising Workgroup included three WSBA members who had been members of the APRL Committee (Art Lachman, Bruce Johnson, and Peter Jarvis), three representatives of the WSBA Committee on Professional Ethics (Chair Mark Fucile, Peter Jarvis, and Natalie Cain), and two WSBA staff liaisons (Chief Disciplinary Counsel Doug Ende and General Counsel/Chief Regulatory Counsel Jean McElroy).

APRL is a national professional organization composed primarily of private practitioners who defend lawyers in discipline matters, lawyers who provide ethics and risk management services, and law faculty in the area of legal ethics. In 2013, APRL formed a committee to study the regulation of lawyer advertising in the United States. The Committee, which included a liaison from the National Organization of Bar Counsel (NOBC), issued its report on June 22, 2015.¹ Taking into account constitutional and antitrust concerns, technology change, globalization, and the impact of over-regulation, the report concluded that the rules of professional conduct

¹ The 2015 Report was initially brought to the attention of the Board of Governors in the July 2015 Quarterly Discipline Report. Throughout 2016, in the Executive Director's Report the Board received periodic information about the APRL Reports and status updates on the progress of the Workgroup.

governing lawyer advertising are outdated and unworkable in the current legal environment and are failing to achieve their stated objectives. The report recommended substantial reform of the ABA's Model Rules of Professional Conduct relating to lawyer communications and advertising, together with new regulatory procedures for addressing complaints about lawyer advertising.

In its 2015 Report, the Committee reserved consideration of the Model Rules related to direct solicitation of clients and referrals. The Committee reconvened to consider those issues and issued a Supplemental Report on April 26, 2016 (2016 APRL Supplemental Report) [Supp. Materials]. Mark Tuft, Chair of the APRL Advertising Committee summarizes the proposed changes to the advertising rule, in the article, *Rethinking Lawyer Advertising Rules*, THE PROFESSIONAL LAWYER, Vol. 23, No. 3 (ABA 2016).

The report was presented at a joint APRL-NOBC program in Chicago in August 2015 and at the ABA National Conference on Professional Responsibility in June 2016. APRL subsequently presented its proposal to the ABA Standing Committee on Ethics and Professional Responsibility with the request that the Committee take up consideration of amending the Title 7 Model Rules. The report was also presented and discussed at the General Session of the October 2016 ABA Center for Professional Responsibility Fall Leadership Conference.

In late 2016, the ABA Standing Committee on Ethics and Professional Responsibility elected to take up consideration of potential amendments to the Title 7 Model Rules in light of the APRL Reports, with the goal of presenting amendments to the ABA House of Delegates in 2017 or 2018. The Committee convened a working group composed of representatives of ABA Center for Professional Responsibility entities and liaison organizations to analyze Title 7 and prepare a recommendation. The Committee took written commentary on the APRL proposal through March 1, 2017, and convened a public forum on the APRL proposal at the ABA Mid-Year Meeting in Miami on February 3, 2017.² The CPE understands that the ABA Standing Committee will release a working draft of amendments to the Model Rules based on the APRL proposals by the end of 2017, and host a public forum at the ABA Midyear Meeting on Friday, February 2, 2018, in Vancouver, British Columbia, and receive comments on the draft until March 1, 2018.

II. ESSENCE OF THE APRL PROPOSAL

² A summary of the public forum is available at <http://www.americanbar.org/publications/youraba/2017/march-2017/aba-standing-committee-on-ethics-and-professional-responsibility.html>.

APRL's proposal recommends both substantive and procedural amendments to the ABA Model Rules of Professional Conduct, seeking greater simplicity and uniformity nationally. In short, the APRL Reports propose that the ABA Model Rules focus specifically on false and deceptive advertisements rather than impose complex technical requirements seeking to prohibit potentially misleading, distasteful, or unprofessional communications, and that discipline in this area be reserved for conduct that would otherwise violate Model Rule 8.4(c) (conduct involving fraud, deception, deceit, or misrepresentation). This is achieved in the draft APRL amendments by retaining the core language of Model Rule 7.1 (prohibiting false or misleading communications about a lawyer or the lawyer's services), while deleting Rules 7.4 and 7.5 and most of Rule 7.2. Much of the commentary to the deleted rules is migrated to the comments to Rule 7.1 to provide guidance and direction to lawyers in interpreting how to avoid "false and misleading communications."

With respect to solicitation and referrals, the 2016 Supplemental Report proposes a modified Rule 7.2 that combines elements of current Model Rules 7.2 and 7.3. The modified Rule 7.2 would include a definition of solicitation in the black letter of the rule, and the general ban on solicitation would be limited to in-person and telephone contacts (not including real time electronic contact), with listed exceptions. The proposal also migrates the provision on prepaid and group legal services plans to Rule 7.2 and retains, in modified form, the prohibition in current Rule 7.2 on giving anything of value to a person for recommending the lawyer's services, with listed exceptions.

III. PROCEEDINGS OF THE WSBA WORKGROUP

Following APRL's publication of the 2016 Supplemental Report, the Workgroup held three meetings on July 7, October 14, and December 16, 2016. At the third meeting, the Chief Legal Officer of Avvo, Josh King, met with the Workgroup to share his perspectives on the regulation of communications about legal services.

The focus of the Workgroup's efforts was to analyze whether the APRL proposal would be viable and appropriate in Washington, the ways in which the proposal might need to be modified in light of Washington's existing Title 7 RPC, and the extent to which the APRL proposal might be improved upon to address issues of over-regulation of advertising.

The consensus of the Workgroup was that the APRL proposal represents a viable model for regulatory reform of ethics rules governing lawyer advertising and communications, that work

could begin on how to adapt the proposal for Washington State, and that there is no reason to delay consideration of potential amendments.

IV. CPE WORK ON PROPOSED RPC TITLE 7 AMENDMENTS

In a memorandum dated February 28, 2017, Mr. Ende, on behalf of the WSBA Advertising Workgroup, updated the Board of Governors on the progress of the WSBA Workgroup's efforts. In light of the widespread favorable reception of the APRL Report, the consistency of the APRL proposal with established enforcement practices in Washington State, the availability of knowledgeable volunteers willing to contribute time and effort to the project, and the desirability of prompt action in the area of regulatory reform, the Workgroup proposed that, under the Rules of Procedure of the WSBA Committee on Professional Ethics (CPE),³ the Board of Governors asked the CPE to (1) evaluate, and as appropriate draft, potential amendments to Washington's Title 7 RPC in light of the APRL proposal, (2) include the non-CPE Advertising Workgroup members in the evaluation and drafting process, and (3) report its recommendation to the Board of Governors. The Board of Governors accepted this recommendation at its March 9, 2017, meeting in Olympia.

Since March 2017, a CPE subcommittee composed of CPE members and the non-CPE Advertising Workgroup members has worked on developing proposed rule amendments. These proposals were presented to and adopted by the CPE at its October 20, 2017, and December 15, 2017 meetings. The CPE is proposing that RPC 7.1 and 7.3, with accompanying comments, be amended for the reasons stated below. RPC 7.2, 7.4, and 7.5 would be deleted. RPC 5.5, with a new explanatory comment, would also be amended to clarify that the participation of

³ The CPE Rules of Procedure pertaining to consideration of amendments to the Rules of Professional Conduct provide as follows:

Amendments to Rules of Professional Conduct. The Committee reports to the Board of Governors its opinion on any amendment to the ABA Model Rules of Professional Conduct. The Committee may, on its own initiative or on request of the Board of Governors or the Supreme Court, report to the Board of Governors its opinion regarding suggested or proposed amendments to the Washington Rules of Professional Conduct. When considering suggested or proposed amendments, the Committee may solicit input from individuals or groups who have relevant experience with the amendments under consideration or who are likely to be significantly affected by them. Any Committee members making such contact will disclose that contact to the other members of the Committee before or in conjunction with the Committee's consideration of the issue.

Washington lawyers in multijurisdictional law firms does not violate unauthorized practice of law statutes and ethics rules in Washington.

The full text of amended RPCs being proposed is attached as Appendix A. A redline version comparing the proposal to the existing Washington RPCs is attached as Appendix B.

V. EXPLANATION OF CPE RECOMMENDED CHANGES

A. *Communications Regarding Lawyer Services*

The CPE recommends adopting the APRL proposal to simplify the Rules while maintaining the core concept that communications regarding a lawyer's services must not be false or misleading. This core concept is expressed in RPC 7.1, which remains unchanged. Ancillary concepts related to (1) the communication of fields of practice and specialization, and (2) firm names, currently expressed in RPC 7.4 and 7.5 respectively, are incorporated into RPC 7.1 by moving the comments from RPC 7.4 and 7.5 to RPC 7.1 as new comments [5]-[13]. Black letter Rules 7.4 and 7.5 are removed.

The only difference from the APRL proposal is to reflect the existence in Washington of LLLTs in the comments, including the addition of "Additional Washington Comments (3-4)" from RPC 7.5 as Additional Washington Comments (12-13) to RPC 7.1.

B. *Advertising*

The CPE recommends removing the "Advertising" rule, RPC 7.2. The historical basis for having a separate rule was based on traditional restrictions on lawyer advertising that no longer exist. The provision in paragraph (b) of current RPC 7.2(b) for "referral fees" are proposed to be moved to RPC 7.3, the solicitation rule, as discussed below.

C. *Solicitation*

The CPE recommends simplifying the solicitation rule, RPC 7.3(a), consistent with the policies discussed in APRL's Supplemental Report dated April 26, 2016, which quoted *Ohralik v. Ohio State Bar Assn.*, 436 U. S. 447, 464 (1978), and suggests that, consistent with the First Amendment, "regulation of those contacts is justified only if the solicitation occurs under circumstances that are 'inherently conducive to overreaching or other forms of misconduct.'" For that reason, the CPE is proposing to eliminate Washington's current restriction on solicitations that are significantly motivated "by the lawyer's pecuniary gain" and are done "by

in-person, live telephone, or real-time electronic contract,” unless the potential client “has a prior family, close personal, or prior professional relationship with the lawyer,” and to focus instead on all solicitations that are unwanted or abusive. Also, rather than carve out a safe-harbor exception for in-person contacts with “sophisticated users of legal services,” as APRL has suggested, the CPE recommends a simple command that directly addresses the *Ohralik* “misconduct” problem—irrespective of the form of communication.

On April 17, 2017, the Virginia Supreme Court embraced this principle when it became the first state to adopt the APRL solicitation reforms (See Virginia amendments to Rules 7.1 – 7.5 in Supp. Materials). Meanwhile, the Oregon State Bar House of Delegates adopted a new solicitation rule on November 3, 2017, which follows the Virginia approach by limiting solicitation restrictions to abusive or unwanted communications “by any means” (See Oregon Bar House of Delegates Board of Governors Resolution No. 4 Amendment to ORPC 7.3 in Supp. Materials). The CPE’s recommended language is virtually identical to Oregon’s new RPC 7.3(a).

D. Law Firms with Offices in Multiple Jurisdictions

Current RPC 7.5(b) appears to be the only place in the rules that even implicitly provides a justification for permitting out-of-state law firms to open branch offices here, and allowing Washington-based law firms to open offices in other jurisdictions. See RCW 2.48.180(2)(b), (2)(c), (2)(d), (2)(e); RPC 5.5(b)(1) (a lawyer not admitted in Washington may not establish an office here for the practice of law “except as authorized by these Rules or other law”); 2 Hazard, Hodes & Jarvis, *The Law of Lawyering* §63.06 (4th ed. 2015) (explaining that RPC 7.5(b), which “is chiefly concerned with the manner in which multistate firms present themselves to the public,” implicitly endorses the existence of such firms; “Without such an understanding, a single firm could not *have* ‘offices in more than one jurisdiction’ . . .”). See also RCW 2.48.180(7) (in a prosecution for unauthorized practice of law under the Washington statute, “it is a defense if proven by the defendant by a preponderance of the evidence that, at the time of the offense, the conduct alleged was authorized by the rules of professional conduct or the admission to practice rules, or Washington business and professions licensing statutes or rules”).

Because RPC 7.5 would be repealed under the rule changes being recommended, the CPE proposes that a new paragraph be added in RPC 5.5 (Unauthorized Practice of Law; Multijurisdictional Practice of Law) to clarify that lawyers in firms having offices in more than one jurisdiction does not itself constitute a violation of the Rules of Professional Conduct and

the Washington UPL statute. The CPE also proposes that new comments be added to RPC 5.5 (Comment 22) and RPC 7.1 (Comment 14) explaining why this rule change is being made. References to RPC 7.5 in comments 4 and 21 to RPC 5.5 are removed. In addition, two technical corrections are made to Comments [5] and [14] of RPC 5.5 to clarify those comments as Washington revisions. Finally, as an additional technical correction, two instances of the phrase “to prospective clients” are deleted from Comment [21] to conform the comment to the Model Rule.

E. Compensation for Recommending Lawyer Services (“Referral Fees”)

The CPE recommends adopting the APRL proposal regarding referral fees, moving the rule from RPC 7.2(b) to paragraph (b) of the solicitation rule, RPC 7.3, to reflect the historical justification of the rule as a prohibited form of solicitation (i.e., unseemly “running” or “ambulance chasing”). See Hazard, Hodes, & Jarvis, *The Law of Lawyering*, *supra*, at §60.05 (4th ed. 2015) (“Ordinarily, paying for a recommendation of a lawyer’s services is a form of solicitation, and thus is prohibited by Model Rule 7.3. [Model] Rule 7.2(b), however, provides several commonsense exceptions to govern situations in which money does indeed change hands in exchange for a recommendation of services, but where the evils of direct contact solicitation are not present.”).

The only difference from the APRL proposal is to reflect the existence in Washington of LLLTs in paragraph (b)(4). Adopting this version of the referral fee rule will change or clarify the Washington rule on referral fees as follows:

- The rule is revised to expressly permit referral fee payments to lawyers and employees in the same firm to address, as noted in the APRL report, the reality that lawyers in the same firm routinely pay a portion of earned fees on a matter to the “originating” lawyer in the firm;
- Paragraph (b)(1) is changed to clarify that payments for online group directories or advertising platforms are permitted payments for advertising;
- Paragraph (b)(4) is changed to permit reciprocal referral arrangements with other licensed legal professionals (in addition to lawyers and LLLTs), consistent with the current ABA version of the rule and the APRL proposal.

There was strong sentiment by CPE members and the non-CPE Advertising Workgroup subcommittee members that the “referral fee” rule proposed to be moved to RPC 7.3 should be further amended to permit referrals to for-profit lawyer referral services, or even eliminated altogether. Such change(s) would require careful consideration and evaluation of other rules, including RPC 5.4(a) (prohibiting lawyers from sharing of fees with other licensed legal professionals) and RPC 1.5(e) (referral fees in the context of referrals between lawyers/law firms). *See also* RPC 1.5(e)(2) (permitting fee splitting between lawyers if “the division is between the lawyer and a duly authorized lawyer referral service of either the Washington State Bar Association or of one of the county bar associations of this state”). The CPE determined that consideration of such revisions were beyond the CPE’s scope of work as requested by the Board of Governors for this project.

The CPE encourages the WSBA Board of Governors to examine these and other related rules and issues in order to optimize the delivery of services by members of the legal profession to consumers in our modern economy. In the Committee’s view, this effort should also include reexamining other aspects of RPC 5.4, including licensed legal professionals investment in law firms and multidisciplinary practice; RPC 5.5 regarding multijurisdictional practice and UPL; RPC 5.6 regarding restrictions on rights to practice; and RPC 5.7 regarding lawyer ancillary businesses.

If Governors are interested in more information on this topic, there are two recent law review articles exploring issues relating to lawyer regulation and the need for improvement in the delivery of legal services by lawyers in the U.S.: Gillian K. Hadfield & Deborah L. Rhode, *How to Regulate Legal Services to Promote Access, Innovation, and the Quality of Lawyering*, 67 HASTINGS L.J. 1191 (2016) and Andrew M. Perlman, *Towards the Law of Legal Services*, 37 CARDOZO L. REV. 49 (2016).

VI. ACCOMPANYING DOCUMENTS:

- Appendix A: Proposed Amendments to RPC 7.1 – 7.5 and RPC 5.5. (Clean Copy)
- Appendix B: Proposed Amendments to RPC 7.1 – 7.5 and RPC 5.5 (Redline)

SUGGESTED AMENDMENTS TO RPC

TITLE 7 – INFORMATION ABOUT LEGAL SERVICES

1 **RPC 7.1 COMMUNICATIONS CONCERNING A LAWYER'S SERVICES**

2
3 A lawyer shall not make a false or misleading communication about the lawyer or the
4 lawyer's services. A communication is false or misleading if it contains a material
5 misrepresentation of fact or law, or omits a fact necessary to make the statement considered
6 as a whole not materially misleading.

7 8 **Comment**

9 [1] [Washington revision] This Rule governs all communications about a lawyer's services.
10 Whatever means are used to make known a lawyer's services, statements about them must
11 be truthful.

12
13 [2] Truthful statements that are misleading are also prohibited by this Rule. A truthful
14 statement is misleading if it omits a fact necessary to make the lawyer's communication
15 considered as a whole not materially misleading. A truthful statement is also misleading if
16 there is a substantial likelihood that it will lead a reasonable person to formulate a specific
17 conclusion about the lawyer or the lawyer's services for which there is no reasonable
18 factual foundation.

19
20 [3] An advertisement that truthfully reports a lawyer's achievements on behalf of clients or
21 former clients may be misleading if presented so as to lead a reasonable person to form an
22 unjustified expectation that the same results could be obtained for other clients in similar
23 matters without reference to the specific factual and legal circumstances of each client's
24 case. Similarly, an unsubstantiated comparison of the lawyer's services or fees with the
25 services or fees of other lawyers may be misleading if presented with such specificity as
26 would lead a reasonable person to conclude that the comparison can be substantiated. The

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1 inclusion of an appropriate disclaimer or qualifying language may preclude a finding that a
2 statement is likely to create unjustified expectations or otherwise mislead the public.

3
4 [4] [Washington revision] It is professional misconduct for a lawyer to engage in conduct
5 involving dishonesty, fraud, deceit or misrepresentation. Rule 8.4(c). See also Rule 8.4(e)
6 for the prohibition against stating or implying an ability to influence improperly a
7 government agency or official or to achieve results by means that violate the Rules of
8 Professional Conduct or other law.

9
10 Additional Washington Comments (5-14)

11
12 [5] To assist the public in learning about and obtaining legal services, lawyers should be
13 allowed to make known their services not only through reputation but also through
14 organized information campaigns in the form of advertising. Advertising involves an active
15 quest for clients, contrary to the tradition that a lawyer should not seek clientele. However,
16 the public's need to know about legal services can be fulfilled in part through advertising.
17 This need is particularly acute in the case of persons of moderate means who have not
18 made extensive use of legal services. The interest in expanding public information about
19 legal services ought to prevail over considerations of tradition. Nevertheless, advertising by
20 lawyers entails the risk of practices that are misleading or overreaching.

21
22 [6] This Rule permits public dissemination of information concerning a lawyer's name or
23 firm name, address, email address, website, and telephone number; the kinds of services the
24 lawyer will undertake; the basis on which the lawyer's fees are determined, including prices
25 for specific services and payment and credit arrangements; a lawyer's foreign language
26

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1 ability; names of references and, with their consent, names of clients regularly represented;
2 and other information that might invite the attention of those seeking legal assistance.
3

4 [7] Questions of effectiveness and taste in advertising are matters of speculation and
5 subjective judgment. Some jurisdictions have had extensive prohibitions against television
6 and other forms of advertising, against advertising going beyond specified facts about a
7 lawyer, or against "undignified" advertising. Television, the Internet, and other forms of
8 electronic communication are now among the most powerful media for getting information
9 to the public, particularly persons of low and moderate income; prohibiting television,
10 Internet, and other forms of electronic advertising, therefore, would impede the flow of
11 information about legal services to many sectors of the public. Limiting the information
12 that may be advertised has a similar effect and assumes that the bar can accurately forecast
13 the kind of information that the public would regard as relevant.
14

15 *Areas of Expertise/Specialization*

16 [8] A lawyer may indicate areas of practice in communications about the lawyer's services.
17 If a lawyer practices only in certain fields, or will not accept matters except in a specified
18 field or fields, the lawyer is permitted to so indicate. A lawyer is generally permitted to
19 state that the lawyer is a "specialist," practices a "specialty," or "specializes in" particular
20 fields, but such communications are subject to the "false and misleading" standard applied
21 in Rule 7.1 to communications concerning a lawyer's services. A lawyer may state that the
22 lawyer is certified as a specialist in a field of law if such certification is granted by an
23 organization approved by an appropriate state authority or accredited by the American Bar
24 Association or another organization, such as a state bar association, that has been approved
25 by the state authority to accredit organizations that certify lawyers as specialists.
26 Certification signifies that an objective entity has recognized an advanced degree of

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

7
8 [9] In advertising concerning an LLLT's services, an LLLT is required to communicate the
9 fact that the LLLT has a limited license in the particular fields of law for which the LLLT
10 is licensed and must not state or imply that the LLLT has broader authority to practice than
11 is in fact the case. See LLLT RPC 7.4(a); see also LLLT RPC 7.2(c) (advertisements must
12 include the name and office address of at least one responsible LLLT or law firm). When
13 lawyers and LLLTs are associated in a firm, lawyers with managerial or pertinent
14 supervisory authority must take measures to assure that the firm's communications conform
15 with these obligations. See Rule 5.10.

16 17 *Firm Names*

18 [10] A firm may be designated by the names of all or some of its members, by the names of
19 deceased members where there has been a continuing succession in the firm's identity or by
20 a trade name such as the "ABC Legal Clinic." A lawyer or law firm may also be designated
21 by a distinctive website address or comparable professional designation. Although the
22 United States Supreme Court has held that legislation may prohibit the use of trade names
23 in professional practice, use of such names in law practice is acceptable so long as it is not
24 misleading. If a private firm uses a trade name that includes a geographical name such as
25 "Springfield Legal Clinic," an express disclaimer that it is a public legal aid agency may be
26 required to avoid a misleading implication. It may be observed that any firm name

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1 including the name of a deceased partner is, strictly speaking, a trade name. The use of
2 such names to designate law firms has proven a useful means of identification. However, it
3 is misleading to use the name of a lawyer or LLLT not associated with the firm or a
4 predecessor of the firm, or the name of an individual who is neither a lawyer nor an LLLT.

5
6 [11] Lawyers or LLLTs sharing office facilities, but who are not in fact associated with
7 each other in a law firm, may not denominate themselves as, for example, "Smith and
8 Jones," for that title suggests that they are practicing law together in a firm.

9
10 [12] When lawyers and LLLTs are associated with each other in a law firm, the firm may
11 be designated using the name of a member LLLT if the name is not otherwise in violation
12 of this Rule.

13
14 [13] Lawyers or LLLTs practicing out of the same office who are not partners, shareholders
15 of a professional corporation, or members of a professional limited liability company or
16 partnership may not join their names together. Lawyers or LLLTs who are not 1) partners,
17 shareholders of a professional corporation, or members of a professional limited liability
18 company or partnership, or 2) employees of a sole proprietorship, partnership, professional
19 corporation, or members of a professional limited liability company or partnership or other
20 organization, or 3) in the relationship of being "Of Counsel" to a sole proprietorship,
21 partnership, professional corporation, or members of a professional limited liability
22 company or partnership or other organization, must have separate letterheads, cards and
23 pleading paper, and must sign their names individually at the end of all pleadings and
24 correspondence and not in conjunction with the names of other lawyers or LLLTs.

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

RPC 7.2 [Reserved.]

RPC 7.3 SOLICITATION OF CLIENTS

(a) A lawyer may solicit professional employment unless:

- (1) the solicitation is false or misleading;
- (2) the lawyer knows or reasonably should know that the physical, emotional, or mental state of the subject of the solicitation is such that the person could not exercise reasonable judgment in employing a lawyer;
- (3) the subject of the solicitation has made known to the lawyer a desire not to be solicited by the lawyer; or
- (4) the solicitation involves coercion, duress, or harassment.

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

- (1) pay the reasonable cost of advertisements or communications permitted by Rule 7.1, including online group advertising;
- (2) pay the usual charges of a legal service plan or a not-for-profit lawyer referral service;
- (3) pay for a law practice in accordance with Rule 1.17; and

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

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

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

Comment

[1] [Washington revision] 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 can reasonably be understood as offering to provide, legal services. Solicitations can include in-person, written, telephonic, and electronic communications. In contrast, a lawyer's communication typically does not constitute a solicitation if it is directed to the general public, such as through a billboard, an Internet banner advertisement, a website or a television commercial, or if it is in response to a request for information or is automatically generated in response to Internet searches.

[2] [Reserved.]

[3] [Reserved.]

[4] [Reserved.]

[5] [Reserved.]

[6] [Reserved.]

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[7] [Washington revision] 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 that 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 communications, which are permitted subject to the "false or misleading" standard in Rule 7.1.

[8] [Reserved.]

[9] [Reserved.]

Additional Washington Comments (10 - 16)

[10] While all communications about a lawyer's services are subject to the general prohibition against false or misleading communication in Rule 7.1, in-person solicitation can create problems because of the particular circumstances in which the solicitation takes place, and those circumstances are, therefore, appropriately regulated. Paragraph (a) of this Rule prohibits solicitation in circumstances or through means that are not conducive to intelligent, rational decisions. Unwanted solicitations (after the subject has informed the lawyer not to make contact) or solicitations involving coercion, duress, or harassment are

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specifically prohibited. Such circumstances and means could be the harassment of early morning or late-night telephone calls to a potential client to solicit legal work, repeated calls at any time of day, solicitation of an accident victim or the victim's family shortly after the accident or while the victim is still in medical distress (particularly where a lawyer seeks professional employment by in-person or other real-time contact in such circumstances), or solicitation of vulnerable subjects, such as persons facing incarceration, or their family members, in or near a courthouse. The prohibition on solicitation of a subject who cannot "exercise reasonable judgment in employing a lawyer" extends to an individual with diminished capacity who cannot adequately act in the individual's own interest, and the provisions of Rule 1.14 may provide guidance in evaluating "the physical, emotional or mental" state of the subject.

[11] Under Rule 5.1, Rule 5.3, and Rule 8.4(a), the solicitation restrictions that apply to the lawyer's own acts or conduct also extend to acts or conduct by employees, agents, or any third persons acting on the lawyer's behalf.

[12] Washington did not adopt paragraph (c) of the Model Rule relating to labeling of communications and solicitations. A specific labeling requirement is unnecessary in light of the prohibitions in Rule 7.1 and Rule 7.3(a)(1) against false or misleading communications regarding the lawyer or the lawyer's services and in solicitations of professional employment. Washington also has not adopted paragraph (d) of the Model Rule creating a safe harbor for in-person and telephonic solicitations in the context of a prepaid or group legal services plan because solicitations of professional employment by any means and in all contexts are permitted subject to the exceptions contained in paragraphs (a)(1) – (4). In addition, prior provisions and comments under Rule 7.3 in Washington relating to in-person, telephonic, or real-time electronic solicitations in the

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1 context of referrals from a third party or a lawyer referral service have been removed
2 because solicitations by any means in this context are permitted subject to the exceptions
3 contained in paragraphs (a)(1) – (4) of this Rule.

4 5 *Paying Others to Recommend a Lawyer*

6 [13] Paragraph (b) of this Rule was derived from former Washington RPC 7.2(b).

7
8 [14] Except as permitted under paragraphs (b)(1)-(b)(4), lawyers are not permitted to pay
9 others for recommending the lawyer's services or for channeling professional work in a
10 manner that violates RPC 7.1 or RPC 7.3. A communication contains a recommendation if
11 it endorses or vouches for a lawyer's credentials, abilities, competence, character, or other
12 professional qualities. Paragraph (b)(1), however, allows a lawyer to pay for advertising
13 and solicitations permitted by RPC 7.1 and this Rule, including the costs of print directory
14 listings, online directory listings, newspaper ads, television and radio airtime, domain-name
15 registrations, sponsorship fees, Internet-based advertisements, and group advertising. A
16 lawyer may compensate employees, agents and vendors who are engaged to provide
17 marketing or client-development services, such as publicists, public-relations personnel,
18 business-development staff and website designers, as long as the employees, agents and
19 vendors do not direct or regulate the lawyer's professional judgment (see Rule 5.4(c)).
20 Moreover, a lawyer may pay others for generating client leads, such as Internet-based client
21 leads, as long as the lead generator does not recommend the lawyer, any payment to the
22 lead generator is consistent with RPC 1.5(e) (division of fees) and 5.4 (professional
23 independence of the lawyer), and the lead generator's communications are consistent with
24 RPC 7.1 (communications concerning a lawyer's services). To comply with RPC 7.1, a
25 lawyer must not pay a lead generator that states, implies, or creates a reasonable impression
26 that it is recommending the lawyer, is making the referral without payment from the

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1 lawyer, or has analyzed a person's legal problems when determining which lawyer should
2 receive the referral. See also Rule 5.3 (duties of lawyers and law firms with respect to the
3 conduct of nonlawyers); RPC 8.4(a) (duty to avoid violating the rules through the acts of
4 another). For the definition of nonlawyer for the purposes of Rule 5.3, see Washington
5 Comment [5] to Rule 5.3.

6
7 [15] A lawyer may pay the usual charges of a legal service plan or a not-for-profit lawyer
8 referral service. A legal service plan is a prepaid or group legal service plan or a similar
9 delivery system that assists people who seek to secure legal representation. A lawyer
10 referral service, on the other hand, is any individual or entity that operates for the direct or
11 indirect purpose of referring potential clients to lawyers, regardless of whether the term
12 "referral service" is used. The "usual charges" of a legal service plan or not-for-profit
13 lawyer referral service are fees that are openly promulgated and uniformly applied. Not-
14 for-profit lawyer referral services are understood by the public to be consumer-oriented
15 organizations that provide unbiased referrals to lawyers with appropriate experience in the
16 subject matter of the representation and afford other client protections, such as complaint
17 procedures or malpractice insurance requirements.

18
19 [16] A lawyer also may agree to refer clients to another lawyer or LLLT or other
20 nonlawyer professional in return for the undertaking of that person to refer clients or
21 customers to the lawyer. Such reciprocal referral arrangements must not interfere with the
22 lawyer's professional judgment as to making referrals or as to providing substantive legal
23 services. See Rules 2.1 and 5.4(c). Except as provided in Rule 1.5(e), a lawyer who
24 receives referrals from a lawyer or LLLT or other nonlawyer professional must not pay
25 anything solely for the referral, but the lawyer does not violate this Rule by agreeing to
26 refer clients to the other lawyer or LLLT or other nonlawyer professional, so long as the

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1 reciprocal referral agreement is not exclusive and the client is informed of the referral
2 agreement. Conflicts of interest created by such arrangements are governed by Rule 1.7.
3 Reciprocal referral agreements should not be of indefinite duration and should be reviewed
4 periodically to determine whether they comply with these Rules. This Rule does not restrict
5 referrals or divisions of revenues or net income among lawyers within firms comprised of
6 multiple entities. Under LLLT RPC 1.5(e), however, an LLLT may not enter into an
7 arrangement for the division of a fee with a lawyer who is not in the same firm as the
8 LLLT.

9
10 **RPC 7.4 [Reserved.]**

11
12 **RPC 7.5 [Reserved.]**
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SUGGESTED AMENDMENTS TO RPC 5.5

1 **RPC 5.5 UNAUTHORIZED PRACTICE OF LAW; MULTIJURISDICTIONAL** 2 **PRACTICE OF LAW**

3
4 (a) – (e) Unchanged.

5
6 (f) Paragraph (b)(1) of this Rule does not prohibit a law firm with offices in multiple
7 jurisdictions from establishing and maintaining an office in this jurisdiction even if some of
8 the lawyers that are members of the firm or are otherwise employed or retained by or
9 associated with the law firm are not authorized to practice law in this jurisdiction.

10
11 Comment

12 [1] – [3] Unchanged.

13
14 [4] [Washington revision] Other than as authorized by law or this Rule, a lawyer who is not
15 admitted to practice generally in this jurisdiction violates paragraph (b) if the lawyer
16 establishes an office or other systematic and continuous presence in this jurisdiction for the
17 practice of law. Presence may be systematic and continuous even if the lawyer is not
18 physically present here. Such a lawyer must not hold out to the public or otherwise
19 represent that the lawyer is admitted to practice law in this jurisdiction. See also Rule 7.1
20 and Washington Comment [14] to Rule 7.1.

21
22 [5] [Washington revision] There are occasions in which a lawyer admitted to practice in
23 another United States jurisdiction, and not disbarred or suspended from practice in any
24 jurisdiction, may provide legal services on a temporary basis in this jurisdiction under
25 circumstances that do not create an unreasonable risk to the interests of their clients, the
26 public or the courts. Paragraph (c) identifies four such circumstances. The fact that conduct

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1 is not so identified does not imply that the conduct is or is not authorized. With the
2 exception of paragraph (d)(2), this Rule does not authorize a U.S. or foreign lawyer to
3 establish an office or other systematic and continuous presence in this jurisdiction without
4 being admitted to practice generally or as house counsel under APR 8(f) here.

5
6 [6] – [13] Unchanged.

7
8 [14] [Washington revision] Paragraphs (c)(3) and (c)(4) require that the services arise out
9 of or be reasonably related to the lawyer's practice in a jurisdiction in which the lawyer is
10 admitted. A variety of factors evidence such a relationship. The lawyer's client may have
11 been previously represented by the lawyer, or may be resident in or have substantial
12 contacts with the jurisdiction in which the lawyer is admitted. The matter, although
13 involving other jurisdictions, may have a significant connection with that jurisdiction. In
14 other cases, significant aspects of the lawyer's work might be conducted in that jurisdiction
15 or a significant aspect of the matter may involve the law of that jurisdiction. The necessary
16 relationship might arise when the client's activities or the legal issues involve multiple
17 jurisdictions, such as when the officers of a multinational corporation survey potential
18 business sites and seek the services of their lawyer in assessing the relative merits of each.
19 In addition, the services may draw on the lawyer's recognized expertise developed through
20 the regular practice of law on behalf of clients in matters involving a particular body of
21 federal, nationally-uniform, foreign, or international law. Lawyers desiring to provide pro
22 bono legal services on a temporary basis in Washington following determination by the
23 Supreme Court that an emergency affecting the justice system, as a result of a natural or
24 other major disaster, has occurred, who are not otherwise authorized to practice law in
25 Washington, as well as lawyers from another affected jurisdiction who seek to practice law
26 temporarily in Washington, but who are not otherwise authorized to practice law in

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1 Washington, should consult Admission to Practice Rule 27 on Provision of Legal Services
2 Following Determination of Major Disaster.

3
4 [15] – [20] Unchanged.

5
6 [21] [Washington revision] Paragraphs (c) and (d) do not authorize communications
7 advertising legal services in this jurisdiction by lawyers who are admitted to practice in
8 other jurisdictions. Whether and how lawyers may communicate the availability of their
9 services in this jurisdiction is governed by Rule 7.1.

10
11 Additional Washington Comment (22)

12
13 [22] Paragraph (f) is derived from former Rule 7.5(b), which permitted law firms with
14 offices in more than one jurisdiction to use the same name or other professional designation
15 in each jurisdiction, and is intended to maintain authorization in the Rules of Professional
16 Conduct for the presence of multijurisdictional law firms in Washington for purposes of
17 RCW 2.48.180(7).

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1 **RPC 7.1 COMMUNICATIONS CONCERNING A LAWYER'S SERVICES**

2
3 A lawyer shall not make a false or misleading communication about the lawyer or the
4 lawyer's services. A communication is false or misleading if it contains a material
5 misrepresentation of fact or law, or omits a fact necessary to make the statement considered
6 as a whole not materially misleading.

7 8 **Comment**

9 [1] [Washington revision] This Rule governs all communications about a lawyer's services;
10 ~~including advertising permitted by Rule 7.2.~~ Whatever means are used to make known a
11 lawyer's services, statements about them must be truthful.

12
13 [2] Truthful statements that are misleading are also prohibited by this Rule. A truthful
14 statement is misleading if it omits a fact necessary to make the lawyer's communication
15 considered as a whole not materially misleading. A truthful statement is also misleading if
16 there is a substantial likelihood that it will lead a reasonable person to formulate a specific
17 conclusion about the lawyer or the lawyer's services for which there is no reasonable
18 factual foundation.

19
20 [3] An advertisement that truthfully reports a lawyer's achievements on behalf of clients or
21 former clients may be misleading if presented so as to lead a reasonable person to form an
22 unjustified expectation that the same results could be obtained for other clients in similar
23 matters without reference to the specific factual and legal circumstances of each client's
24 case. Similarly, an unsubstantiated comparison of the lawyer's services or fees with the
25 services or fees of other lawyers may be misleading if presented with such specificity as
26 would lead a reasonable person to conclude that the comparison can be substantiated. The

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1 inclusion of an appropriate disclaimer or qualifying language may preclude a finding that a
2 statement is likely to create unjustified expectations or otherwise mislead the public.

3
4 [4] [Washington revision] It is professional misconduct for a lawyer to engage in conduct
5 involving dishonesty, fraud, deceit or misrepresentation. Rule 8.4(c). See also Rule 8.4(e)
6 for the prohibition against stating or implying an ability to influence improperly a
7 government agency or official or to achieve results by means that violate the Rules of
8 Professional Conduct or other law.

9
10 Additional Washington Comments (5-14)

11
12 [5] To assist the public in learning about and obtaining legal services, lawyers should be
13 allowed to make known their services not only through reputation but also through
14 organized information campaigns in the form of advertising. Advertising involves an active
15 quest for clients, contrary to the tradition that a lawyer should not seek clientele. However,
16 the public's need to know about legal services can be fulfilled in part through advertising.
17 This need is particularly acute in the case of persons of moderate means who have not
18 made extensive use of legal services. The interest in expanding public information about
19 legal services ought to prevail over considerations of tradition. Nevertheless, advertising by
20 lawyers entails the risk of practices that are misleading or overreaching.

21
22 [6] This Rule permits public dissemination of information concerning a lawyer's name or
23 firm name, address, email address, website, and telephone number; the kinds of services the
24 lawyer will undertake; the basis on which the lawyer's fees are determined, including prices
25 for specific services and payment and credit arrangements; a lawyer's foreign language
26

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1 ability; names of references and, with their consent, names of clients regularly represented;
2 and other information that might invite the attention of those seeking legal assistance.

3
4 [7] Questions of effectiveness and taste in advertising are matters of speculation and
5 subjective judgment. Some jurisdictions have had extensive prohibitions against television
6 and other forms of advertising, against advertising going beyond specified facts about a
7 lawyer, or against "undignified" advertising. Television, the Internet, and other forms of
8 electronic communication are now among the most powerful media for getting information
9 to the public, particularly persons of low and moderate income; prohibiting television,
10 Internet, and other forms of electronic advertising, therefore, would impede the flow of
11 information about legal services to many sectors of the public. Limiting the information
12 that may be advertised has a similar effect and assumes that the bar can accurately forecast
13 the kind of information that the public would regard as relevant.

14 15 *Areas of Expertise/Specialization*

16 [8] A lawyer may indicate areas of practice in communications about the lawyer's services.
17 If a lawyer practices only in certain fields, or will not accept matters except in a specified
18 field or fields, the lawyer is permitted to so indicate. A lawyer is generally permitted to
19 state that the lawyer is a "specialist," practices a "specialty," or "specializes in" particular
20 fields, but such communications are subject to the "false and misleading" standard applied
21 in Rule 7.1 to communications concerning a lawyer's services. A lawyer may state that the
22 lawyer is certified as a specialist in a field of law if such certification is granted by an
23 organization approved by an appropriate state authority or accredited by the American Bar
24 Association or another organization, such as a state bar association, that has been approved
25 by the state authority to accredit organizations that certify lawyers as specialists.
26 Certification signifies that an objective entity has recognized an advanced degree of

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

7
8 [9] In advertising concerning an LLLT's services, an LLLT is required to communicate the
9 fact that the LLLT has a limited license in the particular fields of law for which the LLLT
10 is licensed and must not state or imply that the LLLT has broader authority to practice than
11 is in fact the case. See LLLT RPC 7.4(a); see also LLLT RPC 7.2(c) (advertisements must
12 include the name and office address of at least one responsible LLLT or law firm). When
13 lawyers and LLLTs are associated in a firm, lawyers with managerial or pertinent
14 supervisory authority must take measures to assure that the firm's communications conform
15 with these obligations. See Rule 5.10.

17 *Firm Names*

18 [10] A firm may be designated by the names of all or some of its members, by the names of
19 deceased members where there has been a continuing succession in the firm's identity or by
20 a trade name such as the "ABC Legal Clinic." A lawyer or law firm may also be designated
21 by a distinctive website address or comparable professional designation. Although the
22 United States Supreme Court has held that legislation may prohibit the use of trade names
23 in professional practice, use of such names in law practice is acceptable so long as it is not
24 misleading. If a private firm uses a trade name that includes a geographical name such as
25 "Springfield Legal Clinic," an express disclaimer that it is a public legal aid agency may be
26 required to avoid a misleading implication. It may be observed that any firm name

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1 including the name of a deceased partner is, strictly speaking, a trade name. The use of
2 such names to designate law firms has proven a useful means of identification. However, it
3 is misleading to use the name of a lawyer or LLLT not associated with the firm or a
4 predecessor of the firm, or the name of an individual who is neither a lawyer nor an LLLT.

5
6 [11] Lawyers or LLLTs sharing office facilities, but who are not in fact associated with
7 each other in a law firm, may not denominate themselves as, for example, "Smith and
8 Jones," for that title suggests that they are practicing law together in a firm.

9
10 [12] When lawyers and LLLTs are associated with each other in a law firm, the firm may
11 be designated using the name of a member LLLT if the name is not otherwise in violation
12 of this Rule.

13
14 [13] Lawyers or LLLTs practicing out of the same office who are not partners, shareholders
15 of a professional corporation, or members of a professional limited liability company or
16 partnership may not join their names together. Lawyers or LLLTs who are not 1) partners,
17 shareholders of a professional corporation, or members of a professional limited liability
18 company or partnership, or 2) employees of a sole proprietorship, partnership, professional
19 corporation, or members of a professional limited liability company or partnership or other
20 organization, or 3) in the relationship of being "Of Counsel" to a sole proprietorship,
21 partnership, professional corporation, or members of a professional limited liability
22 company or partnership or other organization, must have separate letterheads, cards and
23 pleading paper, and must sign their names individually at the end of all pleadings and
24 correspondence and not in conjunction with the names of other lawyers or LLLTs.

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

RPC 7.2 ADVERTISING~~[Reserved.]~~

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

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

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

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

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

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

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

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

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

Comment

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

10
11 ~~[2] This Rule permits public dissemination of information concerning a lawyer's name or~~
12 ~~firm name, address, email address, website, and telephone number; the kinds of services the~~
13 ~~lawyer will undertake; the basis on which the lawyer's fees are determined, including prices~~
14 ~~for specific services and payment and credit arrangements; a lawyer's foreign language~~
15 ~~ability; names of references and, with their consent, names of clients regularly represented;~~
16 ~~and other information that might invite the attention of those seeking legal assistance.~~

17
18 ~~[3] Questions of effectiveness and taste in advertising are matters of speculation and~~
19 ~~subjective judgment. Some jurisdictions have had extensive prohibitions against television~~
20 ~~and other forms of advertising, against advertising going beyond specified facts about a~~
21 ~~lawyer, or against "undignified" advertising. Television, the Internet, and other forms of~~
22 ~~electronic communication are now among the most powerful media for getting information~~
23 ~~to the public, particularly persons of low and moderate income; prohibiting television,~~
24 ~~Internet, and other forms of electronic advertising, therefore, would impede the flow of~~
25 ~~information about legal services to many sectors of the public. Limiting the information~~
26 ~~that may be advertised has a similar effect and assumes that the bar can accurately forecast~~

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1 the kind of information that the public would regard as relevant. But see Rule 7.3(a) for the
2 prohibition against a solicitation of a possible client through a real-time electronic
3 exchange initiated by the lawyer.

4
5 ~~[4] Neither this Rule nor Rule 7.3 prohibits communications authorized by law, such as~~
6 ~~notice to members of a class in class action litigation.~~

7 8 *Paying Others to Recommend a Lawyer*

9 ~~[5] [Washington revision] Except as permitted under paragraphs (b)(1)–(b)(4), lawyers are~~
10 ~~not permitted to pay others for recommending the lawyer’s services or for channeling~~
11 ~~professional work in a manner that violates Rule 7.3. A communication contains a~~
12 ~~recommendation if it endorses or vouches for a lawyer’s credentials, abilities, competence,~~
13 ~~character, or other professional qualities. Paragraph (b)(1), however, allows a lawyer to pay~~
14 ~~for advertising and communications permitted by this Rule, including the costs of print~~
15 ~~directory listings, on-line directory listings, newspaper ads, television and radio airtime,~~
16 ~~domain name registrations, sponsorship fees, Internet-based advertisements, and group~~
17 ~~advertising. A lawyer may compensate employees, agents and vendors who are engaged to~~
18 ~~provide marketing or client development services, such as publicists, public relations~~
19 ~~personnel, business development staff and website designers. Moreover, a lawyer may pay~~
20 ~~others for generating client leads, such as Internet-based client leads, as long as the lead~~
21 ~~generator does not recommend the lawyer, any payment to the lead generator is consistent~~
22 ~~with Rules 1.5(e) (division of fees) and 5.4 (professional independence of the lawyer), and~~
23 ~~the lead generator’s communications are consistent with Rule 7.1 (communications~~
24 ~~concerning a lawyer’s services). To comply with Rule 7.1, a lawyer must not pay a lead~~
25 ~~generator that states, implies, or creates a reasonable impression that it is recommending~~
26 ~~the lawyer, is making the referral without payment from the lawyer, or has analyzed a~~

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1 | ~~person's legal problems when determining which lawyer should receive the referral. See~~
2 | ~~also Rule 5.3 (duties of lawyers and law firms with respect to the conduct of nonlawyers);~~
3 | ~~Rule 8.4(a) (duty to avoid violating the Rules through the acts of another). For the~~
4 | ~~definition of nonlawyer for the purposes of Rule 5.3, see Washington Comment [5] to Rule~~
5 | ~~5.3.~~

6 |
7 | ~~[6] [Washington revision] A lawyer may pay the usual charges of a legal service plan or a~~
8 | ~~not for profit lawyer referral service. A legal service plan is a prepaid or group legal~~
9 | ~~service plan or a similar delivery system that assists people who seek to secure legal~~
10 | ~~representation. A lawyer referral service, on the other hand, is any organization that holds~~
11 | ~~itself out to the public as a lawyer referral service. Such referral services are understood by~~
12 | ~~the public to be consumer-oriented organizations that provide unbiased referrals to lawyers~~
13 | ~~with appropriate experience in the subject matter of the representation and afford other~~
14 | ~~client protections, such as complaint procedures or malpractice insurance requirements.~~
15 | ~~Consequently, this Rule only permits a lawyer to pay the usual charges of a not for profit~~
16 | ~~lawyer referral service.~~

17 |
18 | ~~[7] A lawyer who accepts assignments or referrals from a legal service plan or referrals~~
19 | ~~from a lawyer referral service must act reasonably to assure that the activities of the plan or~~
20 | ~~service are compatible with the lawyer's professional obligations. See Rule 5.3. Legal~~
21 | ~~service plans and lawyer referral services may communicate with the public, but such~~
22 | ~~communication must be in conformity with these Rules. Thus, advertising must not be false~~
23 | ~~or misleading, as would be the case if the communications of a group advertising program~~
24 | ~~or a group legal services plan would mislead the public to think that it was a lawyer referral~~
25 | ~~service sponsored by a state agency or bar association. Nor could the lawyer allow in-~~
26 | ~~person, telephonic, or real-time contacts that would violate Rule 7.3.~~

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

~~Additional Washington Comment (9)~~

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

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1 RPC 7.3 SOLICITATION OF CLIENTS

2
3 (a) A lawyer shall not directly or through a third person, by in-person, live telephone, or
4 real-time electronic contact may solicit professional employment from a possible client
5 when a significant motive for the lawyer's doing so is the lawyer's pecuniary gain, unless
6 the person contacted:

7 (1) is a lawyer or an LLLT or the solicitation is false or misleading;

8 (2) has a family, close personal, or prior professional relationship with the lawyer or
9 the lawyer knows or reasonably should know that the physical, emotional, or mental state
10 of the subject of the solicitation is such that the person could not exercise reasonable
11 judgment in employing a lawyer;

12 (3) has consented to the contact by requesting a referral from a not-for-profit lawyer
13 referral service; the subject of the solicitation has made known to the lawyer a desire not to
14 be solicited by the lawyer; or

15 (4) the solicitation involves coercion, duress, or harassment.

16 (b) A lawyer shall not solicit professional employment from a client by written, recorded or
17 electronic communication or by in-person, telephone or real-time electronic contact even
18 when not otherwise prohibited by paragraph (a), if compensate, or give or promise anything
19 of value to, a person who is not an employee or lawyer in the same law firm for the purpose
20 of recommending or securing the services of the lawyer or law firm, except that a lawyer
21 may;

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

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

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

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

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

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

7 (c) [Reserved.]

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

14 **Comment**

15 [1] [Washington revision] A solicitation is a targeted communication initiated by ~~the~~ or on
16 behalf of a lawyer that is directed to a specific person and that offers to provide, or can
17 reasonably be understood as offering to provide, legal services. Solicitations can include
18 in-person, written, telephonic, and electronic communications. In contrast, a lawyer's
19 communication typically does not constitute a solicitation if it is directed to the general
20 public, such as through a billboard, an Internet banner advertisement, a website or a
21 television commercial, or if it is in response to a request for information or is automatically
22 generated in response to Internet searches.

23
24 [2] [Reserved.] ~~There is a potential for abuse when a solicitation involves direct in-person,~~
25 ~~live telephone or real-time electronic contact by a lawyer with someone known to need~~
26 ~~legal services. These forms of contact subject a person to the private importuning of the~~

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1 | ~~trained advocate in a direct interpersonal encounter. The person, who may already feel~~
2 | ~~overwhelmed by the circumstances giving rise to the need for legal services, may find it~~
3 | ~~difficult fully to evaluate all available alternatives with reasoned judgment and appropriate~~
4 | ~~self-interest in the face of the lawyer's presence and insistence upon being retained~~
5 | ~~immediately. The situation is fraught with the possibility of undue influence, intimidation,~~
6 | ~~and over-reaching.~~

7 |
8 | [3] [Reserved.] ~~This potential for abuse inherent in direct in-person, live telephone or real-~~
9 | ~~time electronic solicitation justifies its prohibition, particularly since lawyers have~~
10 | ~~alternative means of conveying necessary information to those who may be in need of legal~~
11 | ~~services. In particular, communications can be mailed or transmitted by email or other~~
12 | ~~electronic means that do not involve real time contact and do not violate other laws~~
13 | ~~governing solicitations. These forms of communications and solicitations make it possible~~
14 | ~~for the public to be informed about the need for legal services, and about the qualifications~~
15 | ~~of available lawyers and law firms, without subjecting the public to direct in-person,~~
16 | ~~telephone or real time electronic persuasion that may overwhelm a person's judgment.~~

17 |
18 | [4] [Reserved.] ~~The use of general advertising and written, recorded or electronic~~
19 | ~~communications to transmit information from lawyer to the public, rather than direct in-~~
20 | ~~person, live telephone or real-time electronic contact, will help to assure that the~~
21 | ~~information flows cleanly as well as freely. The contents of advertisements and~~
22 | ~~communications permitted under Rule 7.2 can be permanently recorded so that they cannot~~
23 | ~~be disputed and may be shared with others who know the lawyer. This potential for~~
24 | ~~informal review is itself likely to help guard against statements and claims that might~~
25 | ~~constitute false and misleading communications, in violation of Rule 7.1. The contents of~~
26 | ~~direct in-person, live telephone or real-time electronic contact can be disputed and may not~~

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1 be subject to third-party scrutiny. Consequently, they are much more likely to approach
2 (and occasionally cross) the dividing line between accurate representations and those that
3 are false and misleading.

4
5 [5] [Reserved. ~~Washington revision~~] There is far less likelihood that a lawyer would
6 engage in abusive practices against a former client, or a person with whom the lawyer has
7 close personal or family relationship, or in situations in which the lawyer is motivated by
8 considerations other than the lawyer's pecuniary gain. Nor is there a serious potential for
9 abuse when the person contacted is a lawyer or an LLLT. Consequently, the general
10 prohibition in Rule 7.3(a) is not applicable in those situations. Also, paragraph (a) is not
11 intended to prohibit a lawyer from participating in constitutionally protected activities of
12 public or charitable legal service organizations or bona fide political, social, civic,
13 fraternal, employee or trade organizations whose purposes include providing or
14 recommending legal services to its members or beneficiaries.

15
16 [6] [Reserved.] But even permitted forms of solicitation can be abused. Thus, any
17 solicitation which contains information which is false or misleading within the meaning of
18 Rule 7.1, which involves coercion, duress or harassment within the meaning of Rule
19 7.3(b)(2), or which involves contact with someone who has made known to the lawyer a
20 desire not to be solicited by the lawyer within the meaning of Rule 7.3(b)(1) is prohibited.
21 Moreover, if after sending a letter or other communication as permitted by Rule 7.2 the
22 lawyer receives no response, any further effort to communicate with the recipient of the
23 communication may violate the provisions of Rule 7.3(b).

24
25 [7] [Washington revision] This Rule is not intended to prohibit a lawyer from contacting
26 representatives of organizations or groups that may be interested in establishing a group or

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1 prepaid legal plan for their members, insureds, beneficiaries, or other third parties for the
2 purpose of informing such entities of the availability of and details concerning the plan or
3 arrangement which the lawyer or lawyer's firm is willing to offer. This form of
4 communication is not directed to people who are seeking legal services for themselves.
5 Rather, it is usually addressed to an individual acting in a fiduciary capacity seeking a
6 supplier of legal services for others who may, if they choose, become prospective clients of
7 the lawyer. Under these circumstances, the activity ~~which~~ that the lawyer undertakes in
8 communicating with such representatives and the type of information transmitted to the
9 individual are functionally similar to and serve the same purpose as advertising
10 communications, which are permitted under ~~subject to the “false or misleading” standard in~~
11 Rule 7.21.

12
13 [8] [Reserved.]

14
15 ~~[9] [Reserved.] Paragraph (d) of this Rule permits a lawyer to participate with an~~
16 ~~organization which uses personal contact to solicit members for its group or prepaid legal~~
17 ~~service plan, provided that the personal contact is not undertaken by any lawyer who would~~
18 ~~be a provider of legal services through the plan. The organization must not be owned by or~~
19 ~~directed (whether as manager or otherwise) by any lawyer or law firm that participates in~~
20 ~~the plan. For example, paragraph (d) would not permit a lawyer to create an organization~~
21 ~~controlled directly or indirectly by the lawyer and use the organization for the in person or~~
22 ~~telephone solicitation of legal employment of the lawyer through memberships in the plan~~
23 ~~or otherwise. The communication permitted by these organizations also must not be~~
24 ~~directed to a person known to need legal services in a particular matter, but is to be~~
25 ~~designed to inform potential plan members generally of another means of affordable legal~~
26

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1 services. Lawyers who participate in a legal service plan must reasonably assure that the
2 plan sponsors are in compliance with Rules 7.1, 7.2 and 7.3(b). See 8.4(a).

3 4 **Additional Washington Comments (10 - 1416)**

5 [10] A lawyer who receives a referral from a third party should exercise caution in
6 contacting the prospective client directly by in-person, live telephone, or real-time
7 electronic contact. Such contact is generally prohibited by this Rule unless the prospective
8 client has asked to be contacted by the lawyer. A prospective client may request such
9 contact through a third party. Prior to initiating contact with the prospective client,
10 however, the lawyer should confirm with the source of the referral that the prospective
11 client has indeed made such a request. Similarly, when making referrals to other lawyers,
12 the referring lawyer should discuss with the prospective client whether he or she wishes to
13 be contacted directly. While all communications about a lawyer's services are subject to
14 the general prohibition against false or misleading communication in Rule 7.1, in-person
15 solicitation can create problems because of the particular circumstances in which the
16 solicitation takes place, and those circumstances are, therefore, appropriately regulated.
17 Paragraph (a) of this Rule prohibits solicitation in circumstances or through means that are
18 not conducive to intelligent, rational decisions. Unwanted solicitations (after the subject has
19 informed the lawyer not to make contact) or solicitations involving coercion, duress, or
20 harassment are specifically prohibited. Such circumstances and means could be the
21 harassment of early morning or late-night telephone calls to a potential client to solicit legal
22 work, repeated calls at any time of day, solicitation of an accident victim or the victim's
23 family shortly after the accident or while the victim is still in medical distress (particularly
24 where a lawyer seeks professional employment by in-person or other real-time contact in
25 such circumstances), or solicitation of vulnerable subjects, such as persons facing
26 incarceration, or their family members, in or near a courthouse. The prohibition on

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1 solicitation of a subject who cannot “exercise reasonable judgment in employing a lawyer”
2 extends to an individual with diminished capacity who cannot adequately act in the
3 individual’s own interest, and the provisions of Rule 1.14 may provide guidance in
4 evaluating “the physical, emotional or mental” state of the subject.

5
6 ~~[11] Those in need of legal representation often seek assistance in finding a lawyer through~~
7 ~~a lawyer referral service. Washington adopted paragraph (a)(3) in order to facilitate~~
8 ~~communication between lawyers and potential clients who have specifically requested a~~
9 ~~referral from a not for profit lawyer referral service. Under this paragraph, a lawyer~~
10 ~~receiving such a referral may contact the potential client directly by in-person, live~~
11 ~~telephone, or real-time electronic contact to discuss possible representation. Under Rule~~
12 5.1, Rule 5.3, and Rule 8.4(a), the solicitation restrictions that apply to the lawyer’s own
13 acts or conduct also extend to acts or conduct by employees, agents, or any third persons
14 acting on the lawyer’s behalf.

15
16 [12] Washington did not adopt paragraph (c) of the Model Rule relating to labeling of
17 ~~communications with prospective clients~~ and solicitations. A specific labeling requirement
18 is unnecessary in light of the prohibitions in Rule 7.1 and Rule 7.3(a)(1) against false or
19 misleading communications regarding the lawyer or the lawyer’s services and in
20 solicitations of professional employment. Washington also has not adopted paragraph (d)
21 of the Model Rule creating a safe harbor for in-person and telephonic solicitations in the
22 context of a prepaid or group legal services plan because solicitations of professional
23 employment by any means and in all contexts are permitted subject to the exceptions
24 contained in paragraphs (a)(1) – (4). In addition, prior provisions and comments under Rule
25 7.3 in Washington relating to in-person, telephonic, or real-time electronic solicitations in
26 the context of referrals from a third party or a lawyer referral service have been removed

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1 because solicitations by any means in this context are permitted subject to the exceptions
2 contained in paragraphs (a)(1) – (4) of this Rule.

3 *Paying Others to Recommend a Lawyer*

4 ~~[13] The phrase "directly or through a third person" in paragraph (a) was retained from~~
5 ~~former Washington RPC 7.3(a). Paragraph (b) of this Rule was derived from former~~
6 ~~Washington RPC 7.2(b).~~

7
8 ~~[14] The phrase "prospective client" in Rule 7.3(a) has been replaced with the phrase~~
9 ~~"possible client" because the phrase "prospective client" has become a defined phrase~~
10 ~~under Rule 1.18 with a different meaning. This is a departure from the ABA Model Rule~~
11 ~~which has dispensed altogether with the phrase "from a prospective client" in this rule. The~~
12 ~~rule is not intended to preclude lawyers from in person conversations with friends, relatives~~
13 ~~or other professionals (i.e. intermediaries) about other friends, relatives, clients or patients~~
14 ~~who may need or benefit from the lawyer's services, so long as the lawyer is not asking or~~
15 ~~expecting the intermediary to engage in improper solicitation. See RPC 8.4(a) which~~
16 ~~prohibits improper solicitation "through the acts of another." Absent limitation of~~
17 ~~prohibited in person communications to "possible clients" there is danger that lawyers~~
18 ~~might mistakenly infer that the kind of benign conversations with non-client intermediaries~~
19 ~~described above are precluded by this rule. Except as permitted under paragraphs (b)(1)-~~
20 ~~(b)(4), lawyers are not permitted to pay others for recommending the lawyer's services or~~
21 ~~for channeling professional work in a manner that violates RPC 7.1 or RPC 7.3. A~~
22 ~~communication contains a recommendation if it endorses or vouches for a lawyer's~~
23 ~~credentials, abilities, competence, character, or other professional qualities. Paragraph~~
24 ~~(b)(1), however, allows a lawyer to pay for advertising and solicitations permitted by RPC~~
25 ~~7.1 and this Rule, including the costs of print directory listings, online directory listings,~~
26 ~~newspaper ads, television and radio airtime, domain-name registrations, sponsorship fees,~~

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1 Internet-based advertisements, and group advertising. A lawyer may compensate
2 employees, agents and vendors who are engaged to provide marketing or client-
3 development services, such as publicists, public-relations personnel, business-development
4 staff and website designers, as long as the employees, agents and vendors do not direct or
5 regulate the lawyer's professional judgment (see Rule 5.4(c)). Moreover, a lawyer may pay
6 others for generating client leads, such as Internet-based client leads, as long as the lead
7 generator does not recommend the lawyer, any payment to the lead generator is consistent
8 with RPC 1.5(e) (division of fees) and 5.4 (professional independence of the lawyer), and
9 the lead generator's communications are consistent with RPC 7.1 (communications
10 concerning a lawyer's services). To comply with RPC 7.1, a lawyer must not pay a lead
11 generator that states, implies, or creates a reasonable impression that it is recommending
12 the lawyer, is making the referral without payment from the lawyer, or has analyzed a
13 person's legal problems when determining which lawyer should receive the referral. See
14 also Rule 5.3 (duties of lawyers and law firms with respect to the conduct of nonlawyers);
15 RPC 8.4(a) (duty to avoid violating the rules through the acts of another). For the
16 definition of nonlawyer for the purposes of Rule 5.3, see Washington Comment [5] to Rule
17 5.3.

18
19 [15] A lawyer may pay the usual charges of a legal service plan or a not-for-profit lawyer
20 referral service. A legal service plan is a prepaid or group legal service plan or a similar
21 delivery system that assists people who seek to secure legal representation. A lawyer referral
22 service, on the other hand, is any individual or entity that operates for the direct or indirect
23 purpose of referring potential clients to lawyers, regardless of whether the term "referral
24 service" is used. The "usual charges" of a legal service plan or not-for-profit lawyer referral
25 service are fees that are openly promulgated and uniformly applied. Not-for-profit lawyer
26 referral services are understood by the public to be consumer-oriented organizations that

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1 provide unbiased referrals to lawyers with appropriate experience in the subject matter of the
2 representation and afford other client protections, such as complaint procedures or
3 malpractice insurance requirements.

4
5 [16] A lawyer also may agree to refer clients to another lawyer or LLLT or other
6 nonlawyer professional in return for the undertaking of that person to refer clients or
7 customers to the lawyer. Such reciprocal referral arrangements must not interfere with the
8 lawyer's professional judgment as to making referrals or as to providing substantive legal
9 services. See Rules 2.1 and 5.4(c). Except as provided in Rule 1.5(e), a lawyer who
10 receives referrals from a lawyer or LLLT or other nonlawyer professional must not pay
11 anything solely for the referral, but the lawyer does not violate this Rule by agreeing to
12 refer clients to the other lawyer or LLLT or other nonlawyer professional, so long as the
13 reciprocal referral agreement is not exclusive and the client is informed of the referral
14 agreement. Conflicts of interest created by such arrangements are governed by Rule 1.7.
15 Reciprocal referral agreements should not be of indefinite duration and should be reviewed
16 periodically to determine whether they comply with these Rules. This Rule does not restrict
17 referrals or divisions of revenues or net income among lawyers within firms comprised of
18 multiple entities. Under LLLT RPC 1.5(e), however, an LLLT may not enter into an
19 arrangement for the division of a fee with a lawyer who is not in the same firm as the
20 LLLT.

21 22 23 **~~RPC 7.4 COMMUNICATION OF FIELDS OF PRACTICE AND~~** 24 **~~SPECIALIZATION~~[Reserved.]**

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

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1 ~~—— (b) A lawyer admitted to engage in patent practice before the United States Patent and~~
2 ~~Trademark Office may use the designation "Patent Attorney" or a substantially similar~~
3 ~~designation.~~

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

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

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

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

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

18
19 **Comment**

20 ~~[1] [Washington revision] Paragraph (a) of this Rule permits a lawyer to indicate areas of~~
21 ~~practice in communications about the lawyer's services. If a lawyer practices only in certain~~
22 ~~fields, or will not accept matters except in a specified field or fields, the lawyer is permitted~~
23 ~~to so indicate.~~

24 ~~——~~

25 ~~[2] Paragraph (b) recognizes the long-established policy of the Patent and Trademark~~
26 ~~Office for the designation of lawyers practicing before the Office. Paragraph (c) recognizes~~

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1 that designation of Admiralty practice has a long historical tradition associated with
2 maritime commerce and the federal courts.

3 ———

4 ~~[3] [Reserved.]~~

6 **~~Additional Washington Comment (4–5)~~**

7 ~~[4] Statements indicating that the lawyer is a "specialist," practices a "specialty,"~~
8 ~~"specializes in" particular fields, and the like, are subject to the limitations set forth in~~
9 ~~paragraph (d). The provisions of paragraph (d) were taken from former Washington RPC~~
10 ~~7.4(b).~~

11
12 ~~[5] In advertising concerning an LLLT's services, an LLLT is required to communicate the~~
13 ~~fact that the LLLT has a limited license in the particular fields of law for which the LLLT~~
14 ~~is licensed and must not state or imply that the LLLT has broader authority to practice than~~
15 ~~is in fact the case. See LLLT RPC 7.4(a); see also LLLT RPC 7.2(c) (advertisements must~~
16 ~~include the name and office address of at least one responsible LLLT or law firm). When~~
17 ~~lawyers and LLLTs are associated in a firm, lawyers with managerial or pertinent~~
18 ~~supervisory authority must take measures to assure that the firm's communications~~
19 ~~conform with these obligations. See Rule 5.10.~~

21 **~~RPC 7.5 FIRM NAMES AND LETTERHEADS~~[Reserved.]**

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

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1 ~~—— (b) A law firm with offices in more than one jurisdiction may use the same name or~~
2 ~~other professional designation in each jurisdiction, but identification of the lawyers or~~
3 ~~LLLTs in an office of the firm shall indicate the jurisdictional limitations on those not~~
4 ~~licensed to practice in the jurisdiction where the office is located.~~

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

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

11 **Comment**

12 ~~[1] [Washington revision] A firm may be designated by the names of all or some of its~~
13 ~~members, by the names of deceased members where there has been a continuing succession~~
14 ~~in the firm's identity or by a trade name such as the "ABC Legal Clinic." A lawyer or law~~
15 ~~firm may also be designated by a distinctive website address or comparable professional~~
16 ~~designation. Although the United States Supreme Court has held that legislation may~~
17 ~~prohibit the use of trade names in professional practice, use of such names in law practice~~
18 ~~is acceptable so long as it is not misleading. If a private firm uses a trade name that~~
19 ~~includes a geographical name such as "Springfield Legal Clinic," an express disclaimer that~~
20 ~~it is a public legal aid agency may be required to avoid a misleading implication. It may be~~
21 ~~observed that any firm name including the name of a deceased partner is, strictly speaking,~~
22 ~~a trade name. The use of such names to designate law firms has proven a useful means of~~
23 ~~identification. However, it is misleading to use the name of a lawyer or LLLT not~~
24 ~~associated with the firm or a predecessor of the firm, or the name of an individual who is~~
25 ~~neither a lawyer nor an LLLT.~~

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

Additional Washington Comment (3–4)

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

[4] ~~Lawyers or LLLTs practicing out of the same office who are not partners, shareholders of a professional corporation, or members of a professional limited liability company or partnership may not join their names together. Lawyers or LLLTs who are not 1) partners, shareholders of a professional corporation, or members of a professional limited liability company or partnership, or 2) employees of a sole proprietorship, partnership, professional corporation, or members of a professional limited liability company or partnership or other organization, or 3) in the relationship of being "Of Counsel" to a sole proprietorship, partnership, professional corporation, or members of a professional limited liability company or partnership or other organization, must have separate letterheads, cards and pleading paper, and must sign their names individually at the end of all pleadings and correspondence and not in conjunction with the names of other lawyers or LLLTs. (The provisions of this Comment were taken from former Washington RPC 7.5(d).)~~

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RPC 5.5 UNAUTHORIZED PRACTICE OF LAW; MULTIJURISDICTIONAL PRACTICE OF LAW

(a) – (e) Unchanged.

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

Comment

[1] – [3] Unchanged.

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

[5] [Washington revision] There are occasions in which a lawyer admitted to practice in another United States jurisdiction, and not disbarred or suspended from practice in any jurisdiction, may provide legal services on a temporary basis in this jurisdiction under circumstances that do not create an unreasonable risk to the interests of their clients, the public or the courts. Paragraph (c) identifies four such circumstances. The fact that conduct

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1 is not so identified does not imply that the conduct is or is not authorized. With the
2 exception of paragraph (d)(2), this Rule does not authorize a U.S. or foreign lawyer to
3 establish an office or other systematic and continuous presence in this jurisdiction without
4 being admitted to practice generally or as house counsel under APR 8(f) here.

5
6 [6] – [13] Unchanged.

7
8 [14] [Washington revision] Paragraphs (c)(3) and (c)(4) require that the services arise out
9 of or be reasonably related to the lawyer's practice in a jurisdiction in which the lawyer is
10 admitted. A variety of factors evidence such a relationship. The lawyer's client may have
11 been previously represented by the lawyer, or may be resident in or have substantial
12 contacts with the jurisdiction in which the lawyer is admitted. The matter, although
13 involving other jurisdictions, may have a significant connection with that jurisdiction. In
14 other cases, significant aspects of the lawyer's work might be conducted in that jurisdiction
15 or a significant aspect of the matter may involve the law of that jurisdiction. The necessary
16 relationship might arise when the client's activities or the legal issues involve multiple
17 jurisdictions, such as when the officers of a multinational corporation survey potential
18 business sites and seek the services of their lawyer in assessing the relative merits of each.
19 In addition, the services may draw on the lawyer's recognized expertise developed through
20 the regular practice of law on behalf of clients in matters involving a particular body of
21 federal, nationally-uniform, foreign, or international law. Lawyers desiring to provide pro
22 bono legal services on a temporary basis in Washington following determination by the
23 Supreme Court that an emergency affecting the justice system, as a result of a natural or
24 other major disaster, has occurred, who are not otherwise authorized to practice law in
25 Washington, as well as lawyers from another affected jurisdiction who seek to practice law
26 temporarily in Washington, but who are not otherwise authorized to practice law in

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1 Washington, should consult Admission to Practice Rule 27 on Provision of Legal Services
2 Following Determination of Major Disaster.

3
4 [15] – [20] Unchanged.

5
6 [21] [Washington revision] Paragraphs (c) and (d) do not authorize communications
7 advertising legal services to ~~prospective clients~~ in this jurisdiction by lawyers who are
8 admitted to practice in other jurisdictions. Whether and how lawyers may communicate the
9 availability of their services to ~~prospective clients~~ in this jurisdiction is governed by Rules
10 7.1 to 7.5.

11 12 Additional Washington Comment (22)

13 [22] Paragraph (f) is derived from former Rule 7.5(b), which permitted law firms with
14 offices in more than one jurisdiction to use the same name or other professional designation
15 in each jurisdiction, and is intended to maintain authorization in the Rules of Professional
16 Conduct for the presence of multijurisdictional law firms in Washington for purposes of
17 RCW 2.48.180(7).