

PROPOSED (2/28/2020)

Alabama Rules of Professional Conduct

Information About Legal Services

Rule 7.1.

Communications Concerning a Lawyer's Services.

A lawyer shall not make or cause to be made a false or misleading communication about the lawyer, the lawyer's services or another lawyer's services. A communication is false or misleading if it:

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

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

(c) Compares the quality of the lawyer's services with the quality of other lawyers' services, except as provided in Rule 7.4; or

(d) Communicates the certification of the lawyer by a certifying organization, except as provided in Rule 7.4.

Comments

Rule 7 applies to lawyers, whether or not admitted to practice in Alabama, who communicate with prospective clients about legal services in Alabama or who direct communications about legal services to Alabama residents. "Lawyer" includes the lawyer's law firm.

Misleading truthful statements are prohibited by this Rule. A truthful statement is misleading if it omits a fact necessary to make the lawyer's communication considered as a whole not materially misleading. A truthful statement is misleading if a substantial likelihood exists that it will lead a reasonable person to formulate a specific conclusion about the lawyer or the

lawyer's services for which there is not a reasonable factual foundation. A truthful statement is misleading if it is presented in a way that creates a likelihood that a reasonable person would believe the lawyer's communication requires that person to take further action when, in fact, no action is required.

Lawyers who are not in a firm together may not imply or say that they practice together or are professionally connected.

Although a lawyer from another state may petition an Alabama court to permit admission pro hac vice on a specific Alabama case, no law authorizes a pro hac vice practice on a general or permanent basis in the state of Alabama. A lawyer not licensed to practice law in Alabama shall not direct communications about the lawyer's services to potential clients in Alabama, without disclosing that the lawyer is not licensed to practice law in Alabama and without otherwise complying with these Rules.

A communication about a lawyer or firm's services is subject to these Rules if it reasonably is expected to be seen or heard by Alabama residents and does not specifically state that the lawyer or firm will not represent clients in Alabama.

In certain limited situations, a lawyer not licensed in Alabama may be authorized to provide Alabama residents legal services in another jurisdiction. For example, in a class action suit in another state, or in a federal court case, including bankruptcy and immigration, in another state, a lawyer not licensed in Alabama may represent Alabama residents in the litigation. Any such communications by the lawyer disseminated within Alabama or directed at Alabama residents must, however, comply with these Rules.

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Information About Legal Services

Rule 7.2.

Communications Concerning a Lawyer's Services: Specific Rules.

Subject to the requirements of these Rules, a lawyer may communicate information about that lawyer's services through any lawful media.

The provisions of this Rule shall apply to any lawyer or firm who communicates with prospective clients in Alabama about the lawyer's legal services, even if neither the lawyer nor the members of that lawyer's firm are admitted to practice in Alabama.

A lawyer who communicates with prospective clients concerning legal services shall comply with the following:

(a) Any communication covered by these Rules shall state the full street address of the bona fide office of each lawyer who is featured or identified in the communication. For the purposes of this Rule, a bona fide office is the physical location maintained and used by the lawyer from which the lawyer furnishes legal services on a regular and continuing basis. A lawyer who uses a referral service shall ensure that the service discloses the location of the lawyer's bona fide office, or the lawyer's registered bar address, when a referral is made.

(b) Any communication covered by these Rules shall clearly and conspicuously state the name and address of at least one lawyer who is responsible for its content.

(c) A copy of each communication covered by these Rules, and a record of: (1) the date of the communication; (2) the name and the address, telephone number or electronic address to which the communication was sent; and (3) the means by which the communication was sent; shall be kept by the lawyer for six (6) years after the communication's dissemination and must be provided promptly to the Office of General Counsel of the Alabama State Bar

upon request. A failure to retain this information and produce it to the General Counsel promptly if requested is a violation of these Rules.

(d) No communication concerning a lawyer's services shall be made unless it contains the following statement, which shall be clearly legible if written or clearly audible if spoken: **“CHOOSING A LAWYER IS IMPORTANT – DO NOT RELY ONLY ON ADVERTISEMENTS.”**

(e) Any disclaimers or disclosures which these Rules require to be included in a communication must be prominent, conspicuous, clearly legible and easy to see and read if written and easy to hear and understand if spoken. If displayed visually, the disclosure or disclaimer must be displayed for a sufficient time to enable a typical viewer to see, read and understand the disclosure or disclaimer. Spoken disclosures and disclaimers shall be spoken at the same cadence and at the same or slower rate of speed, and at the same loudness, as the other spoken content of the communication.

(f) Any statement or disclaimer required by these Rules shall be made in each language used in the communication to which the statement or disclaimer relates; provided however, merely saying that a particular language is spoken or understood does not require a statement or disclaimer in that language.

(g) If specific fees are mentioned in the communication the lawyer must perform the services at the stated fee. The failure of the lawyer to perform the service at the stated fee shall be prima facie evidence of misleading and deceptive practices. The lawyer shall be bound to perform the services for the stated fee and expenses for at least ninety (90) days after the date of the last communication referencing the stated fee.

(h) Every communication that contains information about the lawyer's fee, including those indicating that the charging of a fee is contingent on outcome or that no fee will be charged in the absence of recovery, or that the fee will be a percentage of recovery, shall disclose, clearly and conspicuously, if the client will be responsible for court costs and expenses of litigation if there is no recovery.

(i) No lawyer shall, directly or indirectly, pay all or part of the cost of a communication for or to prospective clients by another lawyer not in the same firm unless the lawyers are working together to represent jointly clients to whom

the communication is directed. This restriction does not prevent a legal aid agency, a prepaid legal services plan or prepaid legal insurance organization recognized as legitimate by the Office of General Counsel of the Alabama State Bar from paying to communicate information about its legal services if the communication complies with these Rules, and a lawyer may participate in lawyer referral programs and pay the usual fees charged by such programs provided that any such program otherwise complies with these Rules.

(j) A lawyer shall not compensate, give or promise anything of value to a non-lawyer for recommending the lawyer's services, except that a lawyer may pay the reasonable cost of communications permitted by these Rules, and may pay the usual charges of a not-for-profit lawyer referral service.

(k) Communications promising or predicting success or a specific result are prohibited.

(l) A lawyer shall not, as a pretext for the lawyer to obtain and refer cases to lawyers in another firm or practice, make communications concerning legal services that would cause a reasonable prospective client to believe that the lawyer making the communication would personally handle the matter for the prospective client. Any lawyer who represents that the lawyer or the lawyer's firm handles certain types of cases, but actually refers the majority of those cases to another lawyer, shall clearly and prominently include the following disclaimer in the communication:

- (1) "MOST CASES OF THIS TYPE ARE NOT HANDLED BY THIS FIRM, BUT ARE REFERRED TO OTHER ATTORNEYS.", or, if applicable:
- (2) "MOST CASES OF THIS TYPE ARE REFERRED TO OTHER ATTORNEYS FOR PRINCIPAL RESPONSIBILITY."

(m) A lawyer shall not state or imply that he or she will engage in conduct or tactics that would violate the Rules of Professional Conduct or court rule.

(n) Testimonials are not prohibited by Rule 7.2 if the communication otherwise satisfies the requirements of these Rules, subject to the following: (1) The person giving the testimonial about a lawyer or firm must have real and

direct legal experience with the lawyer or firm; and (2) If the person giving the testimonial has been compensated or given or promised anything of value for giving the testimonial, that fact must be disclosed plainly and prominently.

The lawyer on whose behalf the testimonial is made is responsible for ensuring that the testimonial is accurate and not misleading. Any material false or misleading communications by the person giving the testimonial constitute a violation of these Rules by the lawyer.

(o) If a communication includes a result achieved by a lawyer for a client, the result must include a description of the type of case or matter, be objectively verifiable, and the result must be described or presented in a manner that is not misleading.

(p) Every communication containing a past result must, in addition to the general disclaimer in Rule 7.2(d), include this disclaimer, presented clearly and conspicuously: “EVERY CASE IS DIFFERENT AND THIS RESULT DOES NOT GUARANTEE THAT THE SAME RESULT WOULD BE OBTAINED IN ANOTHER CASE.”

(q) If a lawyer featured or identified in a communication to a prospective client is not licensed in Alabama, the communication must disclose that fact plainly and prominently.

(r) If a lawyer or law firm which communicates with prospective clients in Alabama does not have a bona fide office in Alabama, the communication must disclose that fact plainly and prominently.

Comments

NOTE: Although some lawyer communications are not subject to Rule 7.2, *all* lawyer communications about legal services are subject to Rule 7.1.

As used in this Rule, “lawyer” includes the lawyer’s firm.

Communications to prospective clients by a lawyer who does not intend to handle matters for those prospective clients is misleading if the communication would cause a reasonable person to believe that the lawyer making the

communication would personally handle matters for clients who responded to the communication.

Publications, blogs, educational materials and sponsorships or donations that are not motivated by pecuniary gain and contain no representations about the lawyer, or sponsorships or donations that are made in the name of the lawyer or firm and contain no representations about the lawyer or firm, are not subject to the disclosure requirements of Rule 7.2.

The disclosure requirements of Rule 7.2 generally do not apply to lawyer communications required by law, such as notice during litigation to members or potential members of a judicially defined class.

Unsolicited client internet reviews of a lawyer are generally not considered testimonials under this Rule.

A communication about a result achieved by a lawyer for a client is misleading if it would probably cause a reasonable person to form an unjustified expectation that the same or similar result would be obtained for other clients.

Presentation of disclosures or disclaimers in a manner that prevents the prospective client from easily seeing or hearing and understanding the disclosure or disclaimer, such as rapid speech or small or difficult to read writing, and any other presentation that diminishes or distracts from the disclosure or disclaimer, are prohibited by and violate these Rules. Language on billboards or signs required by these Rules must be as readable by viewers as the rest of the communication.

If a communication about legal fees and charges subject to Rule 7.2(g) is in writing, the disclosure concerning subrogation, medical liens, court costs, and expenses of litigation shall be in the same print as the information regarding the lawyer's fee. If the information regarding the fee is spoken, whether in an audio only communication such as a radio commercial or in a communication on television or similar medium, the disclosure concerning subrogation, medical liens, court costs and expenses of litigation must be disclosed orally, spoken clearly and plainly, in the same loudness and cadence as the rest of the communication, and must be given immediately after the information about the fee is presented.

A lawyer shall not permit a non-lawyer or a lawyer not in practice with the lawyer to pay any of the cost of that lawyer's communication for or to prospective clients concerning legal services, with the exception that these Rules do not prohibit lawyers in different firms or practices from sharing advertising costs if they will jointly represent clients in the matters described in the communication.

A lawyer shall not engage in unduly manipulative or intrusive communications about legal services. A communication about legal services is unduly manipulative if it uses an authority figure such as a judge or law enforcement officer, or an actor portraying an authority figure, to endorse or recommend the lawyer or act as a spokesman for or give a testimonial about the lawyer.

Deceptive or inherently misleading communications include but are not limited to communications that contain a judicial, executive, or legislative branch title, unless accompanied by clear modifiers and placed subsequent to the person's name, in reference to a current, former or retired judicial, executive, or legislative branch official currently engaged in the practice of law. For example, a former judge may not state "Judge Doe (retired)" or "Judge Doe, former circuit judge." She may state "Jane Doe, former circuit judge" or "Jane Doe, retired circuit judge ...".

A communication is false or misleading if it uses an actor or model to portray a client of the lawyer, unless the client portrayal is non-speaking and merely background. Using an actor to portray a lawyer whose services are being described or promoted is misleading and is prohibited.

In any communications, including television, internet chats, social media, radio, podcasts, video or other written, electronic or oral communications purporting to give the public legal advice or information, for which the broadcaster or other provider of the platform for the communication receives any remuneration or other consideration, directly or indirectly, from or on behalf of the lawyer making the communication, the lawyer shall conspicuously disclose to the public during the communication (1) the fact that the lawyer or law firm has paid the broadcaster or other platform provider, and (2) the fact that the communication is an advertisement. For a visual communication such as television or the internet, this disclosure must be given orally and in writing at the start of the communication, immediately after any commercial or other interruption, and at the conclusion of the communication. For any radio or other

audio presentation, the disclosure must be given orally at the beginning and conclusion of the communication and orally after any commercial or other interruption.

Communications of case results, including verdicts, are incomplete and misleading even if accurate if they fail to include information about the result that is necessary for a reasonable person to understand and evaluate the result.

Communications of a past result achieved by a lawyer may be misleading if someone other than the lawyer or the lawyer's firm actually achieved the result, if the result was a verdict that was not collected, if the result was a default judgment not described as such, if the trial was not contested, if the verdict was overturned or reduced on appeal, if the result was outside Alabama, etc.

Rule 1.6 (Confidentiality of Information) applies to lawyer and law firm communications, including those addressed in this Rule.

Lawyer communications presented as a "medical alert," "health alert," "public service announcement" or similar description are false and misleading and are prohibited.

Characterizations or depictions of potential litigation adversaries in lawyer communications about legal services must be truthful and not misleading.

Whether a lawyer selecting another lawyer's or firm's name as a keyword for use in an internet search engine company's search-based advertising program is a violation of these Rules depends on the circumstances, but the practice is, at a minimum, discouraged as potentially false and misleading. Manipulating internet search results so as to lead a reasonable prospective client to mistakenly contact the lawyer who manipulated the search results, rather than the lawyer or firm the prospective client searched for, is false and misleading and prohibited by these Rules.

This Rule prohibits lawyers and law firms from advertising or practicing under a trade name that is false or misleading.

This Rule applies to all forms of communication seeking legal employment in any print or electronic form, including but not limited to newspapers, magazines, brochures, flyers, television, radio, direct mail, electronic mail and

internet, including banners, popups, websites, social networking and video sharing media.

This Rule applies to press releases that are provided to media outlets by lawyers or law firms unless the press release is provided to legitimate media outlets that have editorial control, including whether to print any information in the press release, where the media outlet is not paid to print information from the press release, and where the press release is not a solicitation of clients or legal work.

This Rule applies to announcements of and invitations to attend seminars sponsored by a lawyer or law firm, if the announcement or invitation is to an event at which the lawyer's legal services will be promoted or prospective clients will be solicited.

This Rule does not apply to communications aired or disseminated in a jurisdiction other than Alabama if the Alabama Bar member is admitted in the other jurisdiction, the communication complies with the appropriate rules of that jurisdiction and the communication reasonably is not expected to reach Alabama residents.

Communications about a lawyer providing mediation or arbitration services that provide no information about the lawyer's legal services or qualifications other than that the mediator or arbitrator is a lawyer or member of the Alabama Bar, are not subject to the disclaimer requirements of these Rules. Mediators and arbitrators should contact the Alabama Center for Dispute Resolution for guidance concerning specific rules for certified mediators and arbitrators and advisory ethics opinions which apply to mediators and arbitrators.

A blog or other educational or informational communication generally is not subject to the disclaimer requirements of this Rule if it does not promote a lawyer or firm and does not solicit legal employment.

Columns or articles for a newspaper or other media which are merely informational, do not contain promotional information about the lawyer and do not solicit clients or legal work are not subject to this Rule's disclosure requirements.

Communications by a lawyer for politicians or political causes that do not promote a lawyer or law firm are not subject to this Rule. Communications for a

political campaign where the lawyer is running for political office are not subject to this Rule.

The disclosure requirements of this Rule do not apply to communications to solicit birth mothers placed by an attorney on behalf of existing adoption clients.

The disclosure requirements of this Rule do not apply to notices to find witnesses where the witnesses are sought in a matter the lawyer is handling for an existing client and the lawyer does not accept prospective clients as a result of placing the notice seeking witnesses.

Generally promotional items such as pens, coffee mugs, etc. which contain only the firm logo, name and contact information do not require a disclaimer. Likewise, sponsorships which reference only the lawyer or firm name and do not promote legal services or solicit legal work do not require a disclaimer.

Lawyer and law firm websites, Facebook pages, etc. are subject to these Rules. Generally, providing the required general disclaimer on the main or home page is sufficient. Other disclaimers required by these Rules should be placed with the information which triggers the additional required disclaimer (e.g., testimonials, results, fees).

Factors determining whether a law firm or lawyer location in a lawyer communication is a bona fide office includes whether the office has the firm's or lawyer's name on an outside office sign or the building's directory; whether the location is staffed by law firm employees who answer phone calls from or assist with in-person appointments with prospective clients at that location; whether the location is staffed by a receptionist, secretaries, clerks or paralegals employed by the law firm on a full-time basis; whether attorneys furnish legal services from the location in addition to client interviews and conferences; and whether the location is staffed by at least one firm lawyer on a regular and continuing basis.

Communications including dramatizations or depictions of actual or fictitious events must contain the disclaimer: *"DRAMATIZATION. NOT (THE) (AN) ACTUAL EVENT."*

The following are examples of statements that would violate the Rule prohibiting predictions or guarantees of success or a specific result: *"I can save*

your home.”, *“I will get you money for your injuries.”*, and *“Come to me and get acquitted of the charges pending against you.”* However, statements to the effect that the lawyer or law firm will work to protect the client’s rights, protect the client’s assets or protect the client’s family, and that do not promise a specific legal result in a particular matter, may be in compliance with this Rule.

Aspirational statements are generally permissible, such as statements describing goals for a client that a lawyer or law firm will try to meet. For example, aspirational words such *“goal,” “strive,” “dedicated,” “mission,”* and *“philosophy”* may be appropriate. Similarly, *“If you have been injured through no fault of your own, I am dedicated to the recovery of damages on your behalf.”* normally would be permissible.

General statements describing a particular law or area of law that are not promises of a specific legal result or a prediction of success are allowed. For example, *“When the government takes your property through its eminent domain power, the government must provide you with reasonable compensation for your property.”*, normally would be permissible.

A lawyer shall not communicate practice areas in which the lawyer does not currently practice or intend to practice.