Agenda

Supreme Court's Advisory Committee on the Rules of Professional Conduct

April 15, 2019
5:00 to 7:00 p.m.

Administrative Office of the Courts
Scott M. Matheson Courthouse
450 South State Street
Salt Lake City
Judicial Council Room, Suite N31

Welcome and approval of minutes	Tab 1	Steve Johnson, Chair
Recap of regulatory reform March meeting and current regulatory reform discussions	Tab 2	Steve Johnson and all who attended in March
Update on military practice rules 14-804 and 14-805		Steve Johnson
Comments to USB Rule 14-802, URGLPP Rules 15-510; and LPP Rules 1.13, 5.04, and 6.01	Tab 3	Steve Johnson, Nancy Sylvester
Comments to USB Rules 14-302, 14-303, 14-510	Tab 4	Steve Johnson, Nancy Sylvester
Attorney advertising subcommittee rule proposals	Tab 5	Daniel Brough (chair), Billy Walker, Hon. Trent Nelson, Steve Johnson, Joni Jones, Austin Riter
Multidisciplinary Practice Subcommittee brief discussion on Rule 5.4	Tab 6	Tom Brunker (chair), Hon. James Gardner, Cory Talbot, Simon Cantarero, Gary Sackett, Tim Conde
Multi-jurisdiction Practice under Rule 5.5: discussion and assignment of subcommittee	Tab 7	Steve Johnson
Other business		Steve Johnson

2019 Meeting Schedule:

May 20, 2019

June 17, 2019

August 19, 2019

September 16, 2019

October 21, 2019

November 18, 2019

Committee Webpage: http://www.utcourts.gov/committees/RulesPC/

Tab 1

MINUTES OF THE SUPREME COURT'S

ADVISORY COMMITTEE ON THE RULES OF PROFESSIONAL CONDUCT

February 25, 2019

The meeting commenced at 5:02 p.m.

Committee Members Attending:
Steven G. Johnson, Chair
Daniel Brough
Tom Brunker
Simón Cantarero
Hon. James Gardner
Joni Jones
Hon. Trent Nelson (by telephone) (emeritus)
Amy Oliver
Vanessa Ramos
Austin Riter
Cristie Roach
Gary Sackett (emeritus)
Katherine Venti
Padme Veeru-Collings
Billy Walker

Guests:
Justice Deno Himonas
John Lund

Members Excused:
Tim Conde
Hon. Darold McDade
Phillip Lowry
Cory Talbot

Staff:
Nancy Sylvester

Recording Secretary:
Adam Bondy

I. Welcome and Approval of Minutes

Mr. Johnson determined quorum and welcomed the committee.

Motion:
Mr. Brunker moved to approve the minutes from the January 14 meeting. Mr. Riter seconded the motion. The motion passed unanimously.

II. New Business: Discussion on Regulatory Reform

John Lund introduced a new task force focused on regulatory reform and innovation to improve access to and affordability of the civil justice system. Justice Himonas and Mr. Lund answered questions from the committee about scope, vision, and implementation. There will be a special meeting on March 16, 2019 (more details below). A recommended reading is G.K. Hadfield's Rules for a Flat World.

III. Update: Rule 8.4(g) Report and Edits from Supreme Court

Mr. Johnson reported on the Supreme Court's edits to Rule 8.4(g) and (h) and discussed the proposed timeline for adopting the rules as edited.

IV. Update: Rule 1.11 and Intern Policy

An update will be given at the April meeting.

V. New Business: Consistency Checklist

Mr. Johnson discussed the need for a consistency checklist and circulated a draft checklist for use when rules are being drafted or amended. For example, we need to set a standard for adding advisory committee notes/comments when our rule will differ from the model rules.

VI. Update: Comments to RPC Rules affected by LPP Program

Mr. Johnson reported that the proposed rules package has been sent to the Supreme Court.

VII. Report: Attorney Advertising Subcommittee Rule Proposals

Mr. Brough reported for the subcommittee. The subcommittee recognized that advertising does not pose the same level of risk as some of the other client-protection rules. The subcommittee presented proposals for condensing Rule 7.1 and asked for feedback. The full committee discussed several concerns and whether the proposed rules address those concerns, including the dangers posed by in-person advertising. The subcommittee will present amended proposed language by email before the next meeting.

VIII. Report: Multidisciplinary Practice Subcommittee

Mr. Brunker reported for the subcommittee. The subcommittee reviewed an MDP proposal made in 2001 to figure what is useful from it. The committee noted that it is difficult to formulate an MDP implementation plan or set of rule amendments without being given a basic MDP vision/policy. The subcommittee would like to attend the reform task force's special session meeting to better understand the MDP vision/policy before proceeding.

IX. Other Business

None.

X. Next Meeting

Members of the committee are invited to attend a task force special session on Saturday, March 16, 2019, from 9 a.m. to 1 p.m., at Parsons Behle & Latimer (subject to confirmation).

The next regular meeting is scheduled for April 13, 2019, at 5:00 p.m.

XI. Adjournment

The meeting adjourned at 7:04 p.m.

Tab 2

Regulatory Reform

Certain rules of professional conduct have been viewed by lawyers as impediments to their being able to increase their business and to survive in the online world. Restrictions on lawyer advertising, fee sharing, and ownership of and investment in law firms by nonlawyers are concepts that need further risk evaluation to see whether the Utah Rules of Professional Conduct can be amended to loosen restrictions on the business of being lawyers in Utah.

LAWYER ADVERTISING

Traditionally, lawyer advertising was frowned upon as being undignified. Courts went so far to say that advertising would undermine the attorney's sense of self-worth and tarnish the dignified public image of the profession. The United States Supreme Court in *John R. Bates and Van O'Steen v. State Bar of Arizona*, 433 U.S. 350, 97 S. Ct. 2691, 53 L. Ed. 810 (1977) recognized that the lawyer advertising ban in place in Arizona inhibited the free flow of information and kept the public in ignorance. The Court held that Arizona's total ban on lawyer advertising violated the free speech guarantee of the First Amendment. This case opened the door to lawyer advertising in this country.

The *Bates* Court did allow states to ban false, deceptive or misleading advertising, and to regulate the manner in which lawyers may solicit business in person, to require warnings and disclaimers on advertising, and to impose reasonable restrictions on the time, place and manner of advertising. Following the *Bates* decision, most states included such restrictions in their rules of professional conduct. Utah was one of such states.

Despite *Bates* and the many other court rulings since 1977 which removed restrictions on lawyer advertising, the belief on the part of some that lawyer advertising needs to be carefully reigned in has continued to the present. As recently as 2013, the Utah State Bar Commission submitted a petition to the Utah Supreme Court requesting that lawyers be required to submit to a Lawyer Advertising Review Committee copies of all advertising and solicitations no later than the date of mailing or publishing of the advertisements or solicitations, so that the ads could be reviewed for appropriateness. The purpose of the proposed rule was admittedly to prevent Las Vegas-style advertising from creeping into Utah. The proposed rule was not adpted.

Last year the American Bar Association made an attempt to simplify the advertising and solicitation rules. Certain changes were made to the Model Rules of Professional Conduct, and the states were encouraged to adopt similar rules. The Utah Supreme Court's Advisory Committee on the Rules of Professional Conduct has monitored these changes to the Model Rules, and had on its agenda a review of the Utah advertising rules when this regulatory reform task force was established.

The Advisory Committee's review includes an analysis of the purpose of the rules and the need to protect the public while allowing the members of the public to be better-informed of legal services available to them. The Committee must consider the reality that lawyers may advertise online and through attorney-matching services, pay-per-click ads, link-sharing, writing legal blogs, and creating social network accounts in order to promote services. The main concern should be the protection of the public from false, misleading, or overreaching solicitations and advertising. Any other regulation of lawyer advertising seems to serve no legitimate purpose.

The Committee's review of advertising standards is well underway, and a proposal should be sent to the Supreme Court for its consideration by the end of June, 2019.

LAWYER FEE SHARING

Rule 7.2 of the Rules of Professional Conduct prohibits lawyers from giving anything of value to a person for recommending the lawyer's services or for channeling professional work to the lawyers. Current firms such as Legal Match will provide prospective clients with a list of attorneys who practice in the needed area. The client selects from that list which attorney he or she desires to use. Legal Match is then paid a fee for the "match." Legal Match claims that the fee is not a referral fee. Whether or not the fee is a referral fee, this means of obtaining clients is one of the ways clients can be served and one of the ways lawyers can find clients. The rule should balance to risk of harm to prospective clients with the benefit to lawyers.

The advisory Committee will consider this rule in conjunction with the advertising and solicitation rules in its April meeting.

OWNERSHIP OF LAW FIRMS

Non-lawyers have traditionally been prohibited from owning and controlling any interest in law firms. Utah's Rule 5.4, Professional Independence of a Lawyer, provides that a lawyer shall not permit a person who recommends, employs, or pays the lawyer to direct or regulate the lawyer's professional judgment in rendering legal services. Rule 5.4(c). The rules also prohibit a lawyer from practicing with or in the form of a professional corporation or association authorized to practice law for a profit if a nonlawyer owns any interest therein, if a nonlawyer is a director or officer or has a similar position of responsibility in the firm, or if a nonlawyer has a right to direct or control the professional judgment of the lawyer. Rule 5.4(d).

The ABA Ethics 2000 Commission debated vigorously the concept of nonlawyer ownership of law firms in 2000. The ABA House ultimately rejected a proposal to allow nonlawyer ownership of law firms.

In 2001, a petition was made to amend Utah's Rule 5.4 to allow nonlawyer ownership and control of law firms. The proponents argued that such a change would allow clients to have access to various kinds of services under one roof, thereby reducing the overall costs to the clients. The proposal contained no protections of the lawyer's independence or loyalty, or any protections of client confidences.

The Court's Advisory Committee on the Rules of Professional Conduct studied the 2001 proposal carefully, interviewing various stakeholders and proponents of the changes. The Committee concluded that the Court should not adopt the proposal. This decision was based on the concern that the proposal did not protect basic core values of the profession which make it fundamentally different from other professions, including the professional independence of the lawyer, the lawyer's loyalty to clients, and the protection of confidential client information. The Advisory Committee argued that the lawyer's rendering of legal advice cannot be influenced by extraneous considerations that are inconsistent with the client's best interests. The undivided loyalty of a lawyer to the client allows the client to be assured that the lawyer will serve the *client's* interests, and not the interests of some other person or entity. The duty to protect client confidences is essential to the proper fulfilment of the lawyer's fiduciary obligations. The Committee's response to the proposal did, however, impliedly acknowledge that if the core values of the profession could be protected [and the whole purpose of those core values of the

profession is to protect client interests], perhaps structures could be formulated that would allow for nonlawyer ownership of law firms.

In 2006, a proposal to amend the rules of professional conduct in the DC Circuit was submitted by the Washington, DC Bar to the Washington, DC Court of Appeals. On August 1, 2006, the Court entered an order adopting the amendments, effective February 1, 2007. The amendments included changes to Rule 5.4 which allow the ownership of law firms by nonlawyers *if* (1) the law firm has as its sole purpose the provision of legal services, (2) all persons having management duties of an ownership interest agree to abide by the rules of professional conduct for lawyers, (3) the managing lawyers in the firm undertake to be responsible for the nonlawyer participants, and (4) these conditions are set forth in writing. Washington, DC thus became the first jurisdiction in the United States to allow nonlawyer ownership and management of law firms.

The American Bar Association Commission on Ethics 20/20 considered amending the ABA Model Rule 5.4 to allow non-lawyer ownership of law firms. Beginning in 2009, the Commission undertook a careful study of alternative law practice structures. It recognized that some foreign jurisdictions such as the United Kingdom, Canada and Australia have allowed the ownership of law firms by nonlawyers. It considered the Washington, DC rule, and released for comment a discussion draft which described a limited form of court-regulated, non-lawyer ownership of law firms. After consideration of the comments received, however, in April of 2012, the Commission determined it would not propose any changes to the current rule.

The Utah Supreme Court's Advisory Committee on the Rules of Professional Conduct has appointed a subcommittee to examine the issues relating to nonlawyer ownership of law firms. The subcommittee will examine the potential risks to clients and to the public by allowing such entities. An initial report from the subcommittee will be made to the entire Advisory Committee in April of 2019. It is believed that a proposal regarding Utah's Rule 5.4 could go up to the Court as early as July of 2019.

OTHER ISSUES

In order to assure that the Court maintains control over nonlawyers who may be participating in possible "sandboxes" in order to try new methods of providing legal services in Utah, the Court should consider amending its Rule 14-802, which defines the practice of law. The Rule should clarify that the practice of law includes any means of providing legal services in Utah, whether by lawyers or nonlawyers.

In order to facilitate "sandbox" ideas for providing legal services, it may also be necessary to re-evaluate Rule 5.5 of the Rules of Professional Conduct, Unauthorized Practice of Law and Multijurisdictional Practice.

Tab 3

COMMENTS TO RULES
AFFECTED BY LICENSED PARALEGAL PRACTITIONERS (2 COMMENTS)

Rules Governing the State Bar

USB14-0802. Authorization to practice law. The amendments to Rule 14-802 clarify that the forms an LPP may use are forms approved by the Judicial Council.

Rules Governing Licensed Paralegal Practitioners

URGLPP15-0510. Prosecution and appeals. The amendment to Rule 15-510 changes a cross reference to Standing Order No.7 to a cross reference to Rule 14-303.

Licensed Paralegal Practitioners Rules of Professional Conduct

LPP1.013. Organization as a client. Rule 1.13 is repealed because it governs when an LPP represents an organization as a client and an LPP may not represent an organization as a client.

LPP5.04. Professional independence of a licensed paralegal practitioner and **LPP6.01.** Voluntary pro bono legal service.

The amendments to Rules 5.4 and 6.1 remove language that refers to an LPP representing an organization as a client. An LPP may not represent an organization as a client.

Summary:

The two comments suggest a language edit and that LPP's not be permitted to practice, respectively.

Guy Galli

14-802 I believe line 144 should read "Online Court Assistance Program" (not "consumer" assistance)

Dean Collinwood

The proposal to allow paralegals to practice law in the areas of family law etc. is an assault on the integrity of the legal profession. After all the time and energy people put into attending law school and taking the Bar Exam, you are now proposing that people

with absolutely none of that training should be considered qualified to engage in the "limited practice of law"? The result will be the creation of two classes of litigants: one group will have the money to pay for a real lawyer and will get real advice. The other will get unschooled advice from a paralegal. There will thus be quality work going on alongside sloppy work. That is not fair to those who might go to a paralegal. The people of Utah deserve better.

Better to encourage more pro bono or low bono work from real lawyers than to allow persons with no law school training to being giving legal advice and doing legal work. You plan makes a sham of law school and of those who worked hard to pass law school and the Bar.

As a former university professor, I saw only too clearly the difference in quality of those who were teaching with the strength of a PhD behind them and those who were teaching as TAs without their doctorates. The students were the losers when TAs were hired to do what PhDs should have been doing. It will be the same with clients of paralegals.

I strongly object to the proposed changes in the Rules and urge you not to adopt them.

Tab 4

COMMENTS TO RULES OF PROFESSIONAL CONDUCT
AFFECTED BY LICENSED PARALEGAL PRACTITIONERS (1 COMMENT)

USB14-0302. Definitions. New. This is part of an effort to codify Standing Order No. 7, which established a program of professionalism counseling for members of the Utah State Bar. This rule provides the definitions used in Rule 14-303.

USB14-0303. Professionalism and Civility Counseling. New. This is part of an effort to codify Standing Order No. 7, which established a program of professionalism counseling for members of the Utah State Bar. This rule provides for the composition of the Professionalism and Civility Counseling Board, the Board's authority and responsibilities, and the procedures surrounding the submission and resolution of complaints.

USB14-0510. Prosecution and appeals. Amend. Updates references to Standing Order No. 7 to new Rule 14-303.

Summary:

There were four comments, which are below. The first comment suggested language edits, comments two and four suggest that rule changes requiring lawyer civility are ill-advised, and the third comment questions whether this committee will be redundant to the Ethics Advisory Committee.

Scott Reed

USB14-0303, line 30: change "complainant" to " complaint"

USB14-0510, line 22: add "and Civility" after Professionalism

Nancy's response:

These are good edits to the rules.

Denver Snuffer

Professionalism was originally a goal, Bar members being encouraged to aspire to more cordial and respectful interaction. Then rules followed, but they were also suggestive and aspirational. This new step is moving it along further, and shows the inevitable creep from suggestion to compulsion. Without naming names, when I was first admitted to practice some of the most highly thought of lawyers in Utah were mean, junk-yard dog litigators who took no prisoners. I doubt any of them could retain a license to

practice in the direction things are headed. Of course, the rules of professional conduct back then allowed us to "zealously" represent clients (which we are no longer allowed to do). I'm not sure we're benefiting the public, improving the outcome of litigation, or guaranteeing the right outcome by REQUIRING courtesy through rule-making, and ultimately rule enforcement and coercion. Why can't we take a little verbal abuse from an opponent? Why isn't a clearly put, well-framed insult not the best way to make a point at times? Should we be mandating snow-flakery (which is exactly where this is going)?

Nancy's response:

This comment appears to suggest that this process is new, where in fact it is primarily a codification of existing Standing Order 7. The committee should discuss whether a threshold of verbal abuse and insults is appropriate.

Kenneth Lougee

Does this make the Bar's Ethics Advisory Opinion redundant? Is there any coordination between two bodies both of which are issuing ethics opinions published in the Bar Journal. It seems as if the bar committee would be superseded and no longer necessary.

Nancy's response:

The Ethics Advisory Opinion Committee serves a different function than the Professionalism and Civility Counseling Board. The former advises on the ethics of a given situation against the backdrop of the Rules of Professional Conduct. The latter advises on the professionalism or civility of Bar members. So the bar committee's work would not be superseded.

Gregory B Wall

USB 14-0303 is not needed. Indeed, it is guaranteed to (a) increase animosity among members of the Bar (b) add to the burdens attorneys must already deal with concerning complaints from whomever may wish to file a complaint, and (c) delay the prosecution of cases because of the added conflict and some perceived need by the Bar and attorneys to have someone decide if certain courtesies have not been extended when someone feels they should have been, or someone has not been treated the way they think they should have been. Nobody gets along splendidly well with everyone, all the time, Now and then people are going to get into an argument, angry things are going to be said, feelings are going to be hurt. Deal with it! You're going to see disputes over whether certain courtesies should be extended, and frankly, that is something that needs to be learned, and whether such courtesies should be extended is often subjective and should not be subject to some committee's review. If need be, that is what the courts are for. Any such issues between attorneys should not be subject to further Big Brother oversight by the Bar, nor should it be a tool available because some poor soul got his or her feelings hurt. The Bar and courts need to back out of the lives of attorneys and the

private dealings between them. Such added intrusions are both ill-advised and unwarranted.

Nancy's response:

The Bar is but one referral source for professionalism and civility complaints. Judges are also another potential referral source, as are other bar members. And the Board is not an arm of the Bar, but rather an arm of the Supreme Court, and operates independently from both entities.

It is my understanding that although this resource has not historically been used to its full potential, it should nonetheless be available. There are simply situations in which zealous advocacy becomes bullying and complaints about that behavior should be addressed.

Tab 5

Rule 7.1. Communications Concerning a Lawyer's Services.

(a) A lawyer shall not make a false or misleading communication about the lawyer or the lawyer's services. A communication is false or misleading if it:

(~~a~~i) 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~~ii) is likely to create an unjustified or unreasonable expectation about results the lawyer can achieve or has achieved; or

(~~c~~iii) contains a testimonial or endorsement that violates any portion of this Rule.

(b) A lawyer shall not interact with a prospective client in a manner that involves coercion, duress or harassment. [Rule 7.3, Option 2]

Comment

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

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

[3] This Rule permits public dissemination of information concerning a lawyer's name or firm name, address, email address, website, and telephone number; the kinds of services the lawyer will undertake; the basis on which the lawyer's fees are determined, including prices for specific services and payment and credit arrangements; the use of actors or dramatizations to portray the lawyer, law firm, client, or events; and other information that might invite the attention of those seeking legal assistance.

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

[~~4] See also Rule 8.4(e) for the prohibition against stating or implying an ability to influence improperly a government agency or official or to achieve results by means that violate the Rules of Professional Conduct or other law.~~5] A lawyer may state that he or she is certified as a specialist in a field of law if such certification is granted by an organization approved by an appropriate state authority or accredited by the American Bar Association or another organization, such as the Utah State Bar, that has been approved by the state authority to accredit organizations that certify lawyers as specialists. Certification signifies that an objective entity has recognized an advanced degree of knowledge and experience in the

specialty area greater than is suggested by general licensure to practice law. Certifying organizations may be expected to apply standards of experience, knowledge and proficiency to ensure that a lawyer's recognition as a specialist is meaningful and reliable. In order to ensure that consumers can obtain access to useful information about an organization granting certification, the name of the certifying organization must be included in any communication regarding the certification. A lawyer can communicate practice areas and can state that he or she "specializes" in a field based on experience, training, and education, subject to the "false or misleading" standard set forth in this Rule. Also, a lawyer can communicate about patent and trademark and admiralty practice.

[6] There is a potential for abuse when a lawyer, seeking pecuniary gain, contacts a person known to be in need of legal services, especially if the contact is in person or otherwise "live." Unrequested contact may subject a person to the private importuning of the trained advocate in a direct interpersonal encounter. The person, who may already feel overwhelmed by the circumstances giving rise to the need for legal services, may find it difficult to fully evaluate all available alternatives with reasoned judgment and appropriate self-interest in the face of the lawyer's presence and insistence upon an immediate response. The situation is fraught with the possibility of undue influence, intimidation, and over-reaching. A lawyer should proceed with caution and appropriate boundaries when initiating contact with someone in need of legal services, especially when the contact is "live," whether that be in-person, face-to-face, live telephone and other real-time visual or auditory person-to-person communications, where the person is subject to a direct personal encounter without time for reflection. [Rule 7.3, Option 2]

[7] Firm names, letterhead and professional designations are communications concerning a lawyer's services. A firm may be designated by the names of all or some of its current members, by the names of deceased or retired members where there has been a succession in the firm's identity or by a trade name if it is not false or misleading. A lawyer or law firm also may be designated by a distinctive website address, social media username or comparable professional designation that is not misleading. A law firm name or designation is misleading if it implies a connection with a government agency, with a deceased lawyer who was not a former member of the firm, with a lawyer not associated with the firm or a predecessor firm, with a nonlawyer or with a public or charitable legal services organization. If a firm uses a trade name that includes a geographical name such as "Springfield Legal Clinic," an express statement explaining that it is not a public legal aid organization may be required to avoid a misleading implication.

[8] A law firm with offices in more than one jurisdiction may use the same name or other professional designation in each jurisdiction.

[9] Lawyers may not imply or hold themselves out as practicing together in one firm when they are not a firm, as defined in Rule 1.0(d), because to do so would be false and misleading.

[10] It is misleading to use the name of a lawyer holding public office in the name of a law firm, or in communications on the law firm's behalf, during any substantial period in which the lawyer is not practicing with the firm. A firm may continue to use in its firm name the name of a lawyer who is serving in Utah's part-time legislature as long as that lawyer is still associated with the firm.

[11] See also Rule 8.4(e) for the prohibition against stating or implying an ability to influence improperly a government agency or official or to achieve results by means that violate the Rules of Professional Conduct or other law.

[~~4a~~12] The Utah Rule is different from the ABA Model Rule. Subsections (b), (c), and (~~c~~d) are added to the Rule to give further guidance as to which communications are false or misleading. Additional changes have been made to the Comments.

Rule 7.2. ~~Advertising~~Compensation for Referrals or Recommendations.

(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) If the advertisement uses any actors to portray a lawyer, members of the law firm, or clients or utilizes depictions of fictionalized events or scenes, the same must be disclosed.~~

~~(c) All advertisements disseminated pursuant to these Rules shall include the name and office address of at least one lawyer or law firm responsible for their content.~~

~~(d) Every advertisement indicating that the charging of a fee is contingent on outcome or that the fee will be a percentage of the recovery shall set forth clearly the client's responsibility for the payment of costs and other expenses.~~

~~(e) A lawyer who advertises a specific fee or range of fees shall include all relevant charges and fees, and the duration such fees are in effect.~~

~~(f) A lawyer shall not give anything of value to a person for recommending the lawyer's services, except that a~~A lawyer may give nominal gifts as an expression of appreciation that are neither intended nor reasonably expected to be a form of compensation for recommending a lawyer's services.

(b) A lawyer may pay the reasonable cost of advertising permitted by these Rules and may pay the usual charges of a lawyer referral service or other legal service plan.

Comment

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

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

~~[3] Questions of effectiveness and taste in advertising are matters of speculation and subjective judgment. Some jurisdictions have had extensive prohibitions against television and other forms of advertising, against advertising going beyond specified facts about a lawyer or against "undignified" advertising. Television, the Internet and other forms of electronic communication are now among the most powerful media for getting information to the public, particularly persons of low and moderate income; prohibiting television, Internet, and other forms of electronic advertising, therefore, would~~

~~impede the flow of information about legal services to many sectors of the public. Limiting the information that may be advertised has a similar effect and assumes that the Bar can accurately forecast the kind of information that the public would regard as relevant. But see Rule 7.3(a) for the prohibition against a solicitation through a real-time electronic exchange initiated by the lawyer.~~

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

~~Paying Others to Recommend a Lawyer~~

~~[5]~~ Except as permitted by ~~Paragraph (f)~~this rule, lawyers are not permitted to pay others for recommending the lawyer's services or for channeling professional work. For guidance, a gift or pattern of gifts with a fair market value of more than $100.00, whether an item, a service, cash, a discount, or otherwise, may be deemed to be greater than nominal.

[2] Nothing in ~~a manner that violates Rule 7.3. A communication contains a recommendation if it endorses or vouches for a lawyer's credentials, abilities, competence, character, or other professional qualities. Paragraph (f), however, allows a lawyer to pay for advertising and communications permitted by this Rule, including the costs of print directory listings, on-line directory listings, newspaper ads, television and radio airtime, domain-name registrations, sponsorship fees, Internet-based advertisements and group advertising. A lawyer may compensate~~this Rule is intended to prohibit a lawyer from compensating employees, agents, and vendors who are engaged to provide marketing or client-development services, such as publicists, public-relations personnel, business-development staff and website designers. Moreover, a lawyer may pay others for generating client leads, such as Internet-based client leads, as long as the lead generator does not recommend the lawyer, and any payment to the lead generator is consistent with the lawyer's obligations under these rules. To comply with this Rule ~~7.1,~~ a lawyer must not pay a lead generator that states, implies, or creates a reasonable impression that it is recommending the lawyer, is making the referral without payment from the lawyer, or has analyzed a person's legal problems when determining which lawyer should receive the referral. See Rule 5.3 (duties of lawyers and law firms with respect to the conduct of non-lawyers); Rule 8.4(a) (duty to avoid violating the Rules through the acts of another).

[~~6~~3] A lawyer may pay the usual charges of a legal service plan or a lawyer referral service. A legal service plan is a prepaid or group legal service plan or a similar delivery system that assists prospective clients to secure legal representation. A lawyer referral service, on the other hand, is an organization that holds itself out to the public to provide referrals to lawyers with appropriate experience in the subject matter of the representation. No fee generating referral may be made to any lawyer or firm that has an ownership interest in, or who operates or is employed by, the lawyer referral service, or who is associated with a firm that has an ownership interest in, or operates or is employed by, the lawyer referral service.

[~~7~~4] A lawyer who accepts assignments or referral from a legal service plan or referrals from a lawyer referral service must act reasonably to assure that the activities of the plan or service are compatible with the lawyer's professional obligations. See Rule 5.3. Legal service plans and lawyer referral services may communicate with the public, but such communication must be in conformity with these Rules. Thus, advertising must not be false or misleading, as would be the case if the communications of a group

advertising program or a group legal services plan would mislead the public to think that it was a lawyer referral service sponsored by a state agency or bar association. Nor could the lawyer allow in-person, telephonic, or real-time contacts that would violate ~~Rule 7.3.~~the Rules.

[~~8~~5] For the disciplinary authority and choice of law provisions applicable to advertising, see Rule 8.5.

~~[8a] This Rule differs from the ABA Model Rule in that it defines "advertisement" and places some limitations on advertisements. Utah Rule 7.2(b)(2) also differs from the ABA Model Rule by permitting a lawyer to pay the usual charges of any lawyer referral service. This is not limited to not-for-profit services. Comment [6] to the Utah rule is modified accordingly.~~

6] This Rule differs from the ABA Model Rule.

Rule 7.3. Solicitation of Clients.

~~(a) A lawyer shall not by in-person, live telephone or real-time electronic contact solicit professional employment from a prospective client when a significant motive for the lawyer's doing so is the lawyer's pecuniary gain, unless the person contacted:~~

~~(a)(1) is a lawyer;~~

~~(a)(2) has a family, close personal, or prior professional relationship with the lawyer, or~~

~~(a)(3) is unable to make personal contact with a lawyer and the lawyer's contact with the prospective client has been initiated by a third party on behalf of the prospective client.~~Reserved.

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

~~(b)(1) the target of the solicitation has made known to the lawyer a desire not to be solicited by the lawyer; or~~

~~(b)(2) the solicitation involves coercion, duress or harassment.~~

~~(c) Every written, recorded or electronic communication from a lawyer soliciting professional employment from anyone known to be in need of legal services in a particular matter shall include the words "Advertising Material" on the outside envelope, if any, and at the beginning of any recorded or electronic communication, unless the recipient of the communication is a person specified in paragraphs (a)(1) or (a)(2). For the purposes of this subsection, "written communication" does not include advertisement through public media, including but not limited to a telephone directory, legal directory, newspaper or other periodical, outdoor advertising, radio, television or webpage.~~

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

~~Comment~~

~~[1] A solicitation is a targeted communication initiated by the lawyer that is directed to a specific person and that offers to provide, or can reasonably be understood as offering to provide, legal services. In contrast, a lawyer's communication typically does not constitute a solicitation if it is directed to the general public, such as through a billboard, an Internet banner advertisement, a website or a television commercial, or if it is in response to a request for information or is automatically generated in response to Internet searches.~~

~~[2] There is a potential for abuse when a solicitation involves direct in-person, live telephone or real-time electronic contact by a lawyer with someone known to need legal services. These forms of contact subject a person to the private importuning of the trained advocate in a direct interpersonal encounter. The person, who may already feel overwhelmed by the circumstances giving rise to the need for legal services, may find it difficult fully to evaluate all available alternatives with reasoned judgment and appropriate self-interest in the face of the lawyer's presence and insistence upon being retained~~

~~immediately. The situation is fraught with the possibility of undue influence, intimidation, and over-reaching.~~

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

~~[4] The use of general advertising and written, recorded or electronic communications to transmit information from lawyer to the public, rather than direct in-person or other real-time communications, will help to ensure that the information flows cleanly as well as freely. The contents of advertisements and communications permitted under Rule 7.2 can be permanently recorded so that they cannot be disputed and may be shared with others who know the lawyer. This potential for informal review is itself likely to help guard against statements and claims that might constitute false and misleading communications in violation of Rule 7.1. The contents of direct in-person, live telephone or real-time electronic contact can be disputed and may not be subject to third-party scrutiny. Consequently, they are much more likely to approach (and occasionally cross) the dividing line between accurate representations and those that are false and misleading.~~

~~[5] There is far less likelihood that a lawyer would engage in abusive practices against a former client, or a person with whom the lawyer has a close personal or family relationship, or where the lawyer has been asked by a third party to contact a prospective client who is unable to contact a lawyer, for example when the prospective client is incarcerated and is unable to place a call, or is mentally incapacitated and unable to appreciate the need for legal counsel. Nor is there a serious potential for abuse in situations where the lawyer is motivated by considerations other than the lawyer's pecuniary gain, or when the person contacted is also a lawyer. This rule is not intended to prohibit a lawyer from applying for employment with an entity, for example, as in-house counsel. Consequently, the general prohibition in Rule 7.3(a) and the requirements of Rule 7.3(c) are not applicable in those situations. Also, paragraph (a) is not intended to prohibit a lawyer from participating in constitutionally protected activities of public or charitable legal-service organizations or bona fide political, social, civic, fraternal, employee or trade organizations whose purposes include providing or recommending legal services to their members or beneficiaries.~~

~~[5a] Utah's Rule 7.3(a) differs from the ABA Model Rule by authorizing in-person or other real-time contact by a lawyer with a prospective client when that prospective client is unable to make personal contact with a lawyer, but a third party initiates contact with a lawyer on behalf of the prospective client and the lawyer then contacts the prospective client.~~

~~[6] But even permitted forms of solicitation can be abused. Thus, any solicitation which contains information that is false or misleading within the meaning of Rule 7.1, that involves coercion, duress or~~

~~harassment within the meaning of Rule 7.3(b)(2), or that involves contact with someone who has made known to the lawyer a desire not to be solicited by the lawyer within the meaning of Rule 7.3(b)(1) is prohibited. Moreover, if after sending a letter or other communication as permitted by Rule 7.2 the lawyer receives no response, any further effort to communicate with the recipient of the communication may violate the provisions of Rule 7.3(b).~~

~~[7] This Rule is not intended to prohibit a lawyer from contacting representatives of organizations or groups that may be interested in establishing a group or prepaid legal plan for their members, insureds, beneficiaries or other third parties for the purpose of informing such entities of the availability of and the details concerning the plan or arrangement which the lawyer or lawyer's firm is willing to offer. This form of communication is not directed to people who are seeking legal services for themselves. Rather, it is usually addressed to an individual acting in a fiduciary capacity seeking a supplier of legal services for others who may, if they choose, become prospective clients of the lawyer. Under these circumstances, the activity which the lawyer undertakes in communicating with such representatives and the type of information transmitted to the individual are functionally similar to and serve the same purpose as advertising permitted under Rule 7.2.~~

~~[8] The requirement in Rule 7.3(c) that certain communications be marked "Advertising Material" does not apply to communications sent in response to requests of potential clients or their spokespersons or sponsors. General announcements by lawyers, including changes in personnel or office location, do not constitute communications soliciting professional employment from a client known to be in need of legal services within the meaning of this Rule.~~

~~[8a] Utah Rule 7.3(c) requires the words "Advertising Material" to be marked on the outside of an envelope, if any, and at the beginning of any recorded or electronic communication, but not at the end as the ABA Model Rule requires. Lawyer solicitations in public media that regularly contain advertisements do not need the " Advertising Material" notice because persons who view or hear such media usually recognize the nature of the communications.~~

~~[9] Paragraph (d) of this Rule permits a lawyer to participate with an organization that uses personal contact to solicit members for its group or prepaid legal service plan, provided that the personal contact is not undertaken by any lawyer who would be a provider of legal services through the plan. The organization must not be owned by or directed (whether as manager or otherwise) by any lawyer or law firm that participates in the plan. For example, paragraph (d) would not permit a lawyer to create an organization controlled directly or indirectly by the lawyer and use the organization for the in-person or telephone, live person-to-person contacts or other real-time electronic solicitation of legal employment of the lawyer through memberships in the plan or otherwise. The communication permitted by these organizations also must not be directed to a person known to need legal services in a particular matter, but is to be designed to inform potential plan members generally of another means of affordable legal services. Lawyers who participate in a legal service plan must reasonably assure that the plan sponsors are in compliance with Rules 7.1, 7.2 and 7.3(b). See Rule 8.4(a).~~

Rule 7.4. Communication of Fields of Practice.

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

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

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

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

~~(d)(1) the lawyer has been certified as a specialist by an organization that has been approved by an appropriate state authority or that has been accredited by the American Bar Association; and~~

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

~~Comment~~

~~[1] Paragraph (a) of this Rule permits a lawyer to indicate areas of practice in communications about the lawyer's services. If a lawyer practices only in certain fields or will not accept matters except in a specified field or fields, the lawyer is permitted to so indicate. A lawyer is generally permitted to state that the lawyer is a "specialist," practices a "specialty" or "specializes in" particular fields, but such communications are subject to the "false and misleading" standard applied in Rule 7.1 to communications concerning a lawyer's services.~~

~~[2] Paragraph (b) recognizes the long-established policy of the Patent and Trademark Office for the designation of lawyers practicing before the Office. Paragraph (c) recognizes that designation of Admiralty practice has a long historical tradition associated with maritime commerce and the federal courts.~~

~~[3] Paragraph (d) permits a lawyer to state that the lawyer is certified as a specialist in a field of law if such certification is granted by an organization approved by an appropriate state authority or accredited by the American Bar Association or another organization, such as a state bar association, that has been approved by the state authority to accredit organizations that certify lawyers as specialists. Certification signifies that an objective entity has recognized an advanced degree of knowledge and experience in the specialty area greater than is suggested by general licensure to practice law. Certifying organizations may be expected to apply standards of experience, knowledge and proficiency to insure that a lawyer's recognition as a specialist is meaningful and reliable. In order to insure that consumers can obtain access to useful information about an organization granting certification, the name of the certifying organization must be included in any communication regarding the certification.~~ Reserved.

Rule 7.5. Firm Names and Letterheads.

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

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

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

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

~~**Comment**~~

~~[1] A firm may be designated by the names of all or some of its members, by the names of deceased or retired members where there has been a continuing succession in the firm's identity or by a trade name such as the "ABC Legal Clinic." A lawyer or law firm may also be designated by a distinctive website address or comparable professional designation. Although the United States Supreme Court has held that legislation may prohibit the use of trade names in professional practice, use of such names in law practice is acceptable so long as it is not misleading. If a private firm uses a trade name that includes a geographical name such as "Springfield Legal Clinic," an express disclaimer that it is not a public legal aid agency may be required to avoid a misleading implication. It may be observed that any firm name including the name of a deceased or retired partner is, strictly speaking, a trade name. The use of such names to designate law firms has proven a useful means of identification. However, it is misleading to use the name of a lawyer who has not been associated with the firm or a predecessor of the firm, or the name of a nonlawyer.~~

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

~~Effective December 19, 2018~~

Rule 7.1. Communications Concerning a Lawyer's Services.

(a) A lawyer shall not make a false or misleading communication about the lawyer or the lawyer's services. A communication is false or misleading if it:

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

(ii) is likely to create an unjustified or unreasonable expectation about results the lawyer can achieve or has achieved; or

(iii) contains a testimonial or endorsement that violates any portion of this Rule.

(b) A lawyer shall not interact with a prospective client in a manner that involves coercion, duress or harassment. [Rule 7.3, Option 2]

Comment

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

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

[3] This Rule permits public dissemination of information concerning a lawyer's name or firm name, address, email address, website, and telephone number; the kinds of services the lawyer will undertake; the basis on which the lawyer's fees are determined, including prices for specific services and payment and credit arrangements; the use of actors or dramatizations to portray the lawyer, law firm, client, or events; and other information that might invite the attention of those seeking legal assistance.

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

[5] A lawyer may state that he or she is certified as a specialist in a field of law if such certification is granted by an organization approved by an appropriate state authority or accredited by the American Bar Association or another organization, such as the Utah State Bar, that has been approved by the state authority to accredit organizations that certify lawyers as specialists. Certification signifies that an objective entity has recognized an advanced degree of knowledge and experience in the specialty area greater than is suggested by general licensure to practice law. Certifying organizations may be expected to apply standards of experience, knowledge and proficiency to ensure that a lawyer's recognition as a specialist is meaningful and reliable. In order to ensure that consumers can obtain access to useful

information about an organization granting certification, the name of the certifying organization must be included in any communication regarding the certification. A lawyer can communicate practice areas and can state that he or she "specializes" in a field based on experience, training, and education, subject to the "false or misleading" standard set forth in this Rule. Also, a lawyer can communicate about patent and trademark and admiralty practice.

[6] There is a potential for abuse when a lawyer, seeking pecuniary gain, contacts a person known to be in need of legal services, especially if the contact is in person or otherwise "live." Unrequested contact may subject a person to the private importuning of the trained advocate in a direct interpersonal encounter. The person, who may already feel overwhelmed by the circumstances giving rise to the need for legal services, may find it difficult to fully evaluate all available alternatives with reasoned judgment and appropriate self-interest in the face of the lawyer's presence and insistence upon an immediate response. The situation is fraught with the possibility of undue influence, intimidation, and over-reaching. A lawyer should proceed with caution and appropriate boundaries when initiating contact with someone in need of legal services, especially when the contact is "live," whether that be in-person, face-to-face, live telephone and other real-time visual or auditory person-to-person communications, where the person is subject to a direct personal encounter without time for reflection. [Rule 7.3, Option 2]

[7] Firm names, letterhead and professional designations are communications concerning a lawyer's services. A firm may be designated by the names of all or some of its current members, by the names of deceased or retired members where there has been a succession in the firm's identity or by a trade name if it is not false or misleading. A lawyer or law firm also may be designated by a distinctive website address, social media username or comparable professional designation that is not misleading. A law firm name or designation is misleading if it implies a connection with a government agency, with a deceased lawyer who was not a former member of the firm, with a lawyer not associated with the firm or a predecessor firm, with a nonlawyer or with a public or charitable legal services organization. If a firm uses a trade name that includes a geographical name such as "Springfield Legal Clinic," an express statement explaining that it is not a public legal aid organization may be required to avoid a misleading implication.

[8] A law firm with offices in more than one jurisdiction may use the same name or other professional designation in each jurisdiction.

[9] Lawyers may not imply or hold themselves out as practicing together in one firm when they are not a firm, as defined in Rule 1.0(d), because to do so would be false and misleading.

[10] It is misleading to use the name of a lawyer holding public office in the name of a law firm, or in communications on the law firm's behalf, during any substantial period in which the lawyer is not practicing with the firm. A firm may continue to use in its firm name the name of a lawyer who is serving in Utah's part-time legislature as long as that lawyer is still associated with the firm.

[11] See also Rule 8.4(e) for the prohibition against stating or implying an ability to influence improperly a government agency or official or to achieve results by means that violate the Rules of Professional Conduct or other law.

[12] The Utah Rule is different from the ABA Model Rule. Subsections (b), (c), and (d) are added to the Rule to give further guidance as to which communications are false or misleading. Additional changes have been made to the Comments.

Rule 7.2. Compensation for Referrals or Recommendations.

(a) A lawyer may give nominal gifts as an expression of appreciation that are neither intended nor reasonably expected to be a form of compensation for recommending a lawyer's services.

(b) A lawyer may pay the reasonable cost of advertising permitted by these Rules and may pay the usual charges of a lawyer referral service or other legal service plan.

Comment

[1] Except as permitted by this rule, lawyers are not permitted to pay others for recommending the lawyer's services or for channeling professional work. For guidance, a gift or pattern of gifts with a fair market value of more than $100.00, whether an item, a service, cash, a discount, or otherwise, may be deemed to be greater than nominal.

[2] Nothing in this Rule is intended to prohibit a lawyer from compensating employees, agents, and vendors who are engaged to provide marketing or client-development services, such as publicists, public-relations personnel, business-development staff and website designers. Moreover, a lawyer may pay others for generating client leads, such as Internet-based client leads, as long as the lead generator does not recommend the lawyer, and any payment to the lead generator is consistent with the lawyer's obligations under these rules. To comply with this Rule, a lawyer must not pay a lead generator that states, implies, or creates a reasonable impression that it is recommending the lawyer, is making the referral without payment from the lawyer, or has analyzed a person's legal problems when determining which lawyer should receive the referral. See Rule 5.3 (duties of lawyers and law firms with respect to the conduct of non-lawyers); Rule 8.4(a) (duty to avoid violating the Rules through the acts of another).

[3] A lawyer may pay the usual charges of a legal service plan or a lawyer referral service. A legal service plan is a prepaid or group legal service plan or a similar delivery system that assists prospective clients to secure legal representation. A lawyer referral service, on the other hand, is an organization that holds itself out to the public to provide referrals to lawyers with appropriate experience in the subject matter of the representation. No fee generating referral may be made to any lawyer or firm that has an ownership interest in, or who operates or is employed by, the lawyer referral service, or who is associated with a firm that has an ownership interest in, or operates or is employed by, the lawyer referral service.

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

[5] For the disciplinary authority and choice of law provisions applicable to advertising, see Rule 8.5.

[6] This Rule differs from the ABA Model Rule.

Rule 7.3. Solicitation of Clients.

Reserved.

Rule 7.4. Communication of Fields of Practice.

Reserved.

Rule 7.5. Firm Names and Letterheads.

Reserved.

Rule 7.1. Communications Concerning a Lawyer's Services.

A lawyer shall not make a false or misleading communication about the lawyer or the lawyer's services. A communication is false or misleading if it:

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

(b) is likely to create an unjustified or unreasonable expectation about results the lawyer can achieve or has achieved; or

(c) contains a testimonial or endorsement that violates any portion of this Rule.

Comment

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

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

[3] This Rule permits public dissemination of information concerning a lawyer's name or firm name, address, email address, website, and telephone number; the kinds of services the lawyer will undertake; the basis on which the lawyer's fees are determined, including prices for specific services and payment and credit arrangements; the use of actors or dramatizations to portray the lawyer, law firm, client, or events; and other information that might invite the attention of those seeking legal assistance.

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

~~[4] See also Rule 8.4(e) for the prohibition against stating or implying an ability to influence improperly a government agency or official or to achieve results by means that violate the Rules of Professional Conduct or other law.~~5] A lawyer may state that he or she is certified as a specialist in a field of law if such certification is granted by an organization approved by an appropriate state authority or accredited by the American Bar Association or another organization, such as the Utah State Bar, that has been approved by the state authority to accredit organizations that certify lawyers as specialists. Certification signifies that an objective entity has recognized an advanced degree of knowledge and experience in the specialty area greater than is suggested by general licensure to practice law. Certifying organizations may be expected to apply standards of experience, knowledge and proficiency to ensure that a lawyer's

recognition as a specialist is meaningful and reliable. In order to ensure that consumers can obtain access to useful information about an organization granting certification, the name of the certifying organization must be included in any communication regarding the certification. A lawyer can communicate practice areas and can state that he or she "specializes" in a field based on experience, training, and education, subject to the "false or misleading" standard set forth in this Rule. Also, a lawyer can communicate about patent and trademark and admiralty practice.

[6] Firm names, letterhead and professional designations are communications concerning a lawyer's services. A firm may be designated by the names of all or some of its current members, by the names of deceased or retired members where there has been a succession in the firm's identity or by a trade name if it is not false or misleading. A lawyer or law firm also may be designated by a distinctive website address, social media username or comparable professional designation that is not misleading. A law firm name or designation is misleading if it implies a connection with a government agency, with a deceased lawyer who was not a former member of the firm, with a lawyer not associated with the firm or a predecessor firm, with a nonlawyer or with a public or charitable legal services organization. If a firm uses a trade name that includes a geographical name such as "Springfield Legal Clinic," an express statement explaining that it is not a public legal aid organization may be required to avoid a misleading implication.

[7] A law firm with offices in more than one jurisdiction may use the same name or other professional designation in each jurisdiction.

[8] Lawyers may not imply or hold themselves out as practicing together in one firm when they are not a firm, as defined in Rule 1.0(d), because to do so would be false and misleading.

[9] It is misleading to use the name of a lawyer holding public office in the name of a law firm, or in communications on the law firm's behalf, during any substantial period in which the lawyer is not practicing with the firm. A firm may continue to use in its firm name the name of a lawyer who is serving in Utah's part-time legislature as long as that lawyer is still associated with the firm.

[10] See also Rule 8.4(e) for the prohibition against stating or implying an ability to influence improperly a government agency or official or to achieve results by means that violate the Rules of Professional Conduct or other law.

[~~4a~~11] The Utah Rule is different from the ABA Model Rule. Subsections (b), (c), and (~~c~~d) are added to the Rule to give further guidance as to which communications are false or misleading. Additional changes have been made to the Comments.

Rule 7.2. ~~Advertising~~Compensation for Referrals or Recommendations.

(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) If the advertisement uses any actors to portray a lawyer, members of the law firm, or clients or utilizes depictions of fictionalized events or scenes, the same must be disclosed.~~

~~(c) All advertisements disseminated pursuant to these Rules shall include the name and office address of at least one lawyer or law firm responsible for their content.~~

~~(d) Every advertisement indicating that the charging of a fee is contingent on outcome or that the fee will be a percentage of the recovery shall set forth clearly the client's responsibility for the payment of costs and other expenses.~~

~~(e) A lawyer who advertises a specific fee or range of fees shall include all relevant charges and fees, and the duration such fees are in effect.~~

~~(f) A lawyer shall not give anything of value to a person for recommending the lawyer's services, except that a~~A lawyer may give nominal gifts as an expression of appreciation that are neither intended nor reasonably expected to be a form of compensation for recommending a lawyer's services.

(b) A lawyer may pay the reasonable cost of advertising permitted by these Rules and may pay the usual charges of a lawyer referral service or other legal service plan.

Comment

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

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

~~[3] Questions of effectiveness and taste in advertising are matters of speculation and subjective judgment. Some jurisdictions have had extensive prohibitions against television and other forms of advertising, against advertising going beyond specified facts about a lawyer or against "undignified" advertising. Television, the Internet and other forms of electronic communication are now among the most powerful media for getting information to the public, particularly persons of low and moderate income; prohibiting television, Internet, and other forms of electronic advertising, therefore, would~~

~~impede the flow of information about legal services to many sectors of the public. Limiting the information that may be advertised has a similar effect and assumes that the Bar can accurately forecast the kind of information that the public would regard as relevant. But see Rule 7.3(a) for the prohibition against a solicitation through a real-time electronic exchange initiated by the lawyer.~~

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

~~Paying Others to Recommend a Lawyer~~

~~[5]~~ Except as permitted by ~~Paragraph (f)~~this rule, lawyers are not permitted to pay others for recommending the lawyer's services or for channeling professional work. For guidance, a gift or pattern of gifts with a fair market value of more than $100.00, whether an item, a service, cash, a discount, or otherwise, may be deemed to be greater than nominal.

[2] Nothing in ~~a manner that violates Rule 7.3. A communication contains a recommendation if it endorses or vouches for a lawyer's credentials, abilities, competence, character, or other professional qualities. Paragraph (f), however, allows a lawyer to pay for advertising and communications permitted by this Rule, including the costs of print directory listings, on-line directory listings, newspaper ads, television and radio airtime, domain-name registrations, sponsorship fees, Internet-based advertisements and group advertising. A lawyer may compensate employees, agents~~this Rule is intended to prohibit a lawyer from compensating employees, agents, and vendors who are engaged to provide marketing or client-development services, such as publicists, public-relations personnel, business-development staff and website designers. Moreover, a lawyer may pay others for generating client leads, such as Internet-based client leads, as long as the lead generator does not recommend the lawyer, and any payment to the lead generator is consistent with the lawyer's obligations under these rules. To comply with this Rule ~~7.1,~~ a lawyer must not pay a lead generator that states, implies, or creates a reasonable impression that it is recommending the lawyer, is making the referral without payment from the lawyer, or has analyzed a person's legal problems when determining which lawyer should receive the referral. See Rule 5.3 (duties of lawyers and law firms with respect to the conduct of non-lawyers); Rule 8.4(a) (duty to avoid violating the Rules through the acts of another).

[~~6~~3] A lawyer may pay the usual charges of a legal service plan or a lawyer referral service. A legal service plan is a prepaid or group legal service plan or a similar delivery system that assists prospective clients to secure legal representation. A lawyer referral service, on the other hand, is an organization that holds itself out to the public to provide referrals to lawyers with appropriate experience in the subject matter of the representation. No fee generating referral may be made to any lawyer or firm that has an ownership interest in, or who operates or is employed by, the lawyer referral service, or who is associated with a firm that has an ownership interest in, or operates or is employed by, the lawyer referral service.

[~~7~~4] A lawyer who accepts assignments or referral from a legal service plan or referrals from a lawyer referral service must act reasonably to assure that the activities of the plan or service are compatible with the lawyer's professional obligations. See Rule 5.3. Legal service plans and lawyer referral services may communicate with the public, but such communication must be in conformity with these Rules. Thus, advertising must not be false or misleading, as would be the case if the communications of a group

advertising program or a group legal services plan would mislead the public to think that it was a lawyer referral service sponsored by a state agency or bar association. Nor could the lawyer allow in-person, telephonic, or real-time contacts that would violate ~~Rule 7.3.~~the Rules.

[~~8~~5] For the disciplinary authority and choice of law provisions applicable to advertising, see Rule 8.5.

~~[8a] This Rule differs from the ABA Model Rule in that it defines "advertisement" and places some limitations on advertisements. Utah Rule 7.2(b)(2) also differs from the ABA Model Rule by permitting a lawyer to pay the usual charges of any lawyer referral service. This is not limited to not-for-profit services. Comment [6] to the Utah rule is modified accordingly.~~

6] This Rule differs from the ABA Model Rule.

Rule 7.3. Solicitation of Clients.

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

(b) A lawyer shall not ~~by in-person, live telephone or real-time electronic contact~~ solicit professional employment ~~from a prospective client~~by live person-to-person contact when a significant motive for the lawyer~~'~~'s doing so is the lawyer~~'~~'s or law firm's pecuniary gain, unless the ~~person contacted:~~contact is with a:

~~(a)~~(1) ~~is a~~ lawyer;

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

~~(a)(3) is unable to make personal contact with a lawyer and the lawyer's contact with the prospective client has been initiated by a third party on behalf of the prospective client.~~

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

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

~~(b)~~(1) the target of the solicitation has made known to the lawyer a desire not to be solicited by the lawyer; or

~~(b)(2) the solicitation involves coercion, duress or harassment.~~(2) the solicitation involves coercion, duress or harassment.

~~(c) Every written, recorded or electronic communication from a lawyer soliciting professional employment from anyone known to be in need of legal services in a particular matter shall include the words "Advertising Material" on the outside envelope, if any, and at the beginning of any recorded or electronic communication, unless the recipient of the communication is a person specified in paragraphs (a)(1) or (a)(2). For the purposes of this subsection, "written communication" does not include advertisement through public media, including but not limited to a telephone directory, legal directory, newspaper or other periodical, outdoor advertising, radio, television or webpage.~~

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

(~~d~~e) Notwithstanding the prohibitions in ~~paragraph (a)~~this Rule, a lawyer may participate with a prepaid or group legal service plan operated by an organization not owned or directed by the lawyer that uses ~~in-person or other real-time communication to solicit memberships or~~live person-to-person contact to enroll members or sell subscriptions for the plan from persons who are not known to need legal services in a particular matter covered by the plan.

Comment

[1] ~~A solicitation is a targeted communication initiated by the lawyer that is directed to a specific person and that offers to provide, or can reasonably be understood as offering to provide, legal services. In contrast, a lawyer's communication typically does~~Paragraph (b) prohibits a lawyer from soliciting professional employment by live person-to person contact when a significant motive for the lawyer's doing so is the lawyer's or the law firm's pecuniary gain. A lawyer's communication is 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~~electronic searches.

[2] ~~There is a potential for abuse when a solicitation involves direct in-person, live telephone or real-time electronic contact by a lawyer with someone known to need legal services. These forms of contact subject a person to the private importuning of the trained advocate in a direct interpersonal encounter. The person, who may already feel overwhelmed by the circumstances giving rise to the need for legal services, may find it difficult fully to evaluate all available alternatives with reasoned judgment and appropriate self-interest in the face of the lawyer's presence and insistence upon being retained immediately. The situation is fraught with the possibility of undue influence, intimidation, and over-reaching.~~"Live person-to-person contact" means in-person, face-to-face, live telephone and other real-time visual or auditory person-to-person communications, where the person is subject to a direct personal encounter without time for reflection. Such person-to-person, prohibited contact does not include chat rooms, text messages, tweets, Facebook, or other written communications that recipients may easily disregard. The contents of live person-to-person contact can be disputed and may not be subject to third-party scrutiny. Consequently, they are much more likely to approach (and occasionally cross) the dividing line between accurate representations and those that are false, misleading or involve coercion, duress or harassment.

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

[4] ~~The use of general advertising and written, recorded or electronic communications to transmit information from lawyer to the public, rather than direct in-person or other real-time communications, will help to ensure that the information flows cleanly as well as freely. The contents of advertisements and communications permitted under Rule 7.2 can be permanently recorded so that they cannot be disputed and may be shared with others who know the lawyer. This potential for informal review is itself likely to help guard against statements and claims that might constitute false and misleading communications in~~

~~violation of Rule 7.1. The contents of direct in-person, live telephone or real-time electronic contact can be disputed and may not be subject to third-party scrutiny. Consequently, they are much more likely to approach (and occasionally cross) the dividing line between accurate representations and those that are false and misleading.~~A solicitation that contains false or misleading information within the meaning of Rule 7.1, that involves coercion, duress or harassment within the meaning of Rule 7.3(c)(2), or that involves contact with someone who has made known to the lawyer a desire not to be solicited by the lawyer within the meaning of Rule 7.3(c)(1) is prohibited.

~~[5] There is far less likelihood that a lawyer would engage in abusive practices against a former client, or a person with whom the lawyer has a close personal or family relationship, or where the lawyer has been asked by a third party to contact a prospective client who is unable to contact a lawyer, for example when the prospective client is incarcerated and is unable to place a call, or is mentally incapacitated and unable to appreciate the need for legal counsel. Nor is there a serious potential for abuse in situations where the lawyer is motivated by considerations other than the lawyer's pecuniary gain, or when the person contacted is also a lawyer. This rule is not intended to prohibit a lawyer from applying for employment with an entity, for example, as in-house counsel. Consequently, the general prohibition in Rule 7.3(a) and the requirements of Rule 7.3(c) are not applicable in those situations. Also, paragraph (a) is not intended to prohibit a lawyer from participating in constitutionally protected activities of public or charitable legal-service organizations or bona fide political, social, civic, fraternal, employee or trade organizations whose purposes include providing or recommending legal services to their members or beneficiaries.~~

~~[5a] Utah's Rule 7.3(a) differs from the ABA Model Rule by authorizing in-person or other real-time contact by a lawyer with a prospective client when that prospective client is unable to make personal contact with a lawyer, but a third party initiates contact with a lawyer on behalf of the prospective client and the lawyer then contacts the prospective client.~~

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

~~[7] This Rule is not intended to prohibit a lawyer from contacting representatives of organizations or groups that may be interested in establishing a group or prepaid legal plan for their members, insureds, beneficiaries or other third parties for the purpose of informing such entities of the availability of and the details concerning the plan or arrangement which the lawyer or lawyer's firm is willing to offer. This form of communication is not directed to people who are seeking legal services for themselves. Rather, it is usually addressed to an individual acting in a fiduciary capacity seeking a supplier of legal services for others who may, if they choose, become prospective clients of the lawyer. Under these circumstances, the activity which the lawyer undertakes in communicating with such representatives and the type of~~

~~information transmitted to the individual are functionally similar to and serve the same purpose as advertising permitted under Rule 7.2.5~~] Communications authorized by law or ordered by a court or tribunal include a notice to potential members of a class in class action litigation.

~~[8] The requirement in Rule 7.3(c) that certain communications be marked "Advertising Material" does not apply to communications sent in response to requests of potential clients or their spokespersons or sponsors. General announcements by lawyers, including changes in personnel or office location, do not constitute communications soliciting professional employment from a client known to be in need of legal services within the meaning of this Rule.~~

~~[8a] Utah Rule 7.3(c) requires the words "Advertising Material" to be marked on the outside of an envelope, if any, and at the beginning of any recorded or electronic communication, but not at the end as the ABA Model Rule requires. Lawyer solicitations in public media that regularly contain advertisements do not need the " Advertising Material" notice because persons who view or hear such media usually recognize the nature of the communications.~~

~~[9] Paragraph (d) of this Rule permits a lawyer to participate with an organization that uses personal contact to solicit members for its group or prepaid legal service plan, provided that the personal contact is not undertaken by any lawyer who would be a provider of legal services through the plan. The organization must not be owned by or directed (whether as manager or otherwise) by any lawyer or law firm that participates in the plan. For example, paragraph (d) would not permit a lawyer to create an organization controlled directly or indirectly by the lawyer and use the organization for the in-person or telephone, live person-to-person contacts or other real-time electronic solicitation of legal employment of the lawyer through memberships in the plan or otherwise. The communication permitted by these organizations also must not be directed to a person known to need legal services in a particular matter, but is to be designed to inform potential plan members generally of another means of affordable legal services. Lawyers who participate in a legal service plan must reasonably assure that the plan sponsors are in compliance with Rules 7.1, 7.2 and 7.3(b). See Rule 8.4(a).~~

Rule 7.4. Communication of Fields of Practice.

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

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

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

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

~~(d)(1) the lawyer has been certified as a specialist by an organization that has been approved by an appropriate state authority or that has been accredited by the American Bar Association; and~~

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

~~Comment~~

~~[1] Paragraph (a) of this Rule permits a lawyer to indicate areas of practice in communications about the lawyer's services. If a lawyer practices only in certain fields or will not accept matters except in a specified field or fields, the lawyer is permitted to so indicate. A lawyer is generally permitted to state that the lawyer is a "specialist," practices a "specialty" or "specializes in" particular fields, but such communications are subject to the "false and misleading" standard applied in Rule 7.1 to communications concerning a lawyer's services.~~

~~[2] Paragraph (b) recognizes the long-established policy of the Patent and Trademark Office for the designation of lawyers practicing before the Office. Paragraph (c) recognizes that designation of Admiralty practice has a long historical tradition associated with maritime commerce and the federal courts.~~

~~[3] Paragraph (d) permits a lawyer to state that the lawyer is certified as a specialist in a field of law if such certification is granted by an organization approved by an appropriate state authority or accredited by the American Bar Association or another organization, such as a state bar association, that has been approved by the state authority to accredit organizations that certify lawyers as specialists. Certification signifies that an objective entity has recognized an advanced degree of knowledge and experience in the specialty area greater than is suggested by general licensure to practice law. Certifying organizations may be expected to apply standards of experience, knowledge and proficiency to insure that a lawyer's recognition as a specialist is meaningful and reliable. In order to insure that consumers can obtain access to useful information about an organization granting certification, the name of the certifying organization must be included in any communication regarding the certification.~~ Reserved.

Rule 7.5. Firm Names and Letterheads.

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

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

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

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

~~**Comment**~~

~~[1] A firm may be designated by the names of all or some of its members, by the names of deceased or retired members where there has been a continuing succession in the firm's identity or by a trade name such as the "ABC Legal Clinic." A lawyer or law firm may also be designated by a distinctive website address or comparable professional designation. Although the United States Supreme Court has held that legislation may prohibit the use of trade names in professional practice, use of such names in law practice is acceptable so long as it is not misleading. If a private firm uses a trade name that includes a geographical name such as "Springfield Legal Clinic," an express disclaimer that it is not a public legal aid agency may be required to avoid a misleading implication. It may be observed that any firm name including the name of a deceased or retired partner is, strictly speaking, a trade name. The use of such names to designate law firms has proven a useful means of identification. However, it is misleading to use the name of a lawyer who has not been associated with the firm or a predecessor of the firm, or the name of a nonlawyer.~~

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

~~Effective December 19, 2018~~

Rule 7.1. Communications Concerning a Lawyer's Services.

A lawyer shall not make a false or misleading communication about the lawyer or the lawyer's services. A communication is false or misleading if it:

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

(b) is likely to create an unjustified or unreasonable expectation about results the lawyer can achieve or has achieved; or

(c) contains a testimonial or endorsement that violates any portion of this Rule.

Comment

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

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

[3] This Rule permits public dissemination of information concerning a lawyer's name or firm name, address, email address, website, and telephone number; the kinds of services the lawyer will undertake; the basis on which the lawyer's fees are determined, including prices for specific services and payment and credit arrangements; the use of actors or dramatizations to portray the lawyer, law firm, client, or events; and other information that might invite the attention of those seeking legal assistance.

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

[5] A lawyer may state that he or she is certified as a specialist in a field of law if such certification is granted by an organization approved by an appropriate state authority or accredited by the American Bar Association or another organization, such as the Utah State Bar, that has been approved by the state authority to accredit organizations that certify lawyers as specialists. Certification signifies that an objective entity has recognized an advanced degree of knowledge and experience in the specialty area greater than is suggested by general licensure to practice law. Certifying organizations may be expected to apply standards of experience, knowledge and proficiency to ensure that a lawyer's recognition as a specialist is meaningful and reliable. In order to ensure that consumers can obtain access to useful information about an organization granting certification, the name of the certifying organization must be included in any communication regarding the certification. A lawyer can communicate practice areas and

can state that he or she "specializes" in a field based on experience, training, and education, subject to the "false or misleading" standard set forth in this Rule. Also, a lawyer can communicate about patent and trademark and admiralty practice.

[6] Firm names, letterhead and professional designations are communications concerning a lawyer's services. A firm may be designated by the names of all or some of its current members, by the names of deceased or retired members where there has been a succession in the firm's identity or by a trade name if it is not false or misleading. A lawyer or law firm also may be designated by a distinctive website address, social media username or comparable professional designation that is not misleading. A law firm name or designation is misleading if it implies a connection with a government agency, with a deceased lawyer who was not a former member of the firm, with a lawyer not associated with the firm or a predecessor firm, with a nonlawyer or with a public or charitable legal services organization. If a firm uses a trade name that includes a geographical name such as "Springfield Legal Clinic," an express statement explaining that it is not a public legal aid organization may be required to avoid a misleading implication.

[7] A law firm with offices in more than one jurisdiction may use the same name or other professional designation in each jurisdiction.

[8] Lawyers may not imply or hold themselves out as practicing together in one firm when they are not a firm, as defined in Rule 1.0(d), because to do so would be false and misleading.

[9] It is misleading to use the name of a lawyer holding public office in the name of a law firm, or in communications on the law firm's behalf, during any substantial period in which the lawyer is not practicing with the firm. A firm may continue to use in its firm name the name of a lawyer who is serving in Utah's part-time legislature as long as that lawyer is still associated with the firm.

[10] See also Rule 8.4(e) for the prohibition against stating or implying an ability to influence improperly a government agency or official or to achieve results by means that violate the Rules of Professional Conduct or other law.

[11] The Utah Rule is different from the ABA Model Rule. Subsections (b), (c), and (d) are added to the Rule to give further guidance as to which communications are false or misleading. Additional changes have been made to the Comments.

Rule 7.2. Compensation for Referrals or Recommendations.

(a) A lawyer may give nominal gifts as an expression of appreciation that are neither intended nor reasonably expected to be a form of compensation for recommending a lawyer's services.

(b) A lawyer may pay the reasonable cost of advertising permitted by these Rules and may pay the usual charges of a lawyer referral service or other legal service plan.

Comment

[1] Except as permitted by this rule, lawyers are not permitted to pay others for recommending the lawyer's services or for channeling professional work. For guidance, a gift or pattern of gifts with a fair market value of more than $100.00, whether an item, a service, cash, a discount, or otherwise, may be deemed to be greater than nominal.

[2] Nothing in this Rule is intended to prohibit a lawyer from compensating employees, agents, and vendors who are engaged to provide marketing or client-development services, such as publicists, public-relations personnel, business-development staff and website designers. Moreover, a lawyer may pay others for generating client leads, such as Internet-based client leads, as long as the lead generator does not recommend the lawyer, and any payment to the lead generator is consistent with the lawyer's obligations under these rules. To comply with this Rule, a lawyer must not pay a lead generator that states, implies, or creates a reasonable impression that it is recommending the lawyer, is making the referral without payment from the lawyer, or has analyzed a person's legal problems when determining which lawyer should receive the referral. See Rule 5.3 (duties of lawyers and law firms with respect to the conduct of non-lawyers); Rule 8.4(a) (duty to avoid violating the Rules through the acts of another).

[3] A lawyer may pay the usual charges of a legal service plan or a lawyer referral service. A legal service plan is a prepaid or group legal service plan or a similar delivery system that assists prospective clients to secure legal representation. A lawyer referral service, on the other hand, is an organization that holds itself out to the public to provide referrals to lawyers with appropriate experience in the subject matter of the representation. No fee generating referral may be made to any lawyer or firm that has an ownership interest in, or who operates or is employed by, the lawyer referral service, or who is associated with a firm that has an ownership interest in, or operates or is employed by, the lawyer referral service.

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

[5] For the disciplinary authority and choice of law provisions applicable to advertising, see Rule 8.5.

[6] This Rule differs from the ABA Model Rule.

Rule 7.3. Solicitation of Clients.

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

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

(1) lawyer;

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

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

(c) A lawyer shall not solicit professional employment when not otherwise prohibited by paragraph (a), if:

(1) the target of the solicitation has made known to the lawyer a desire not to be solicited by the lawyer; or

(2) the solicitation involves coercion, duress or harassment.

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

(e) Notwithstanding the prohibitions in this Rule, a lawyer may participate with a prepaid or group legal service plan operated by an organization not owned or directed by the lawyer that uses live person-to-person contact to enroll members or sell subscriptions for the plan from persons who are not known to need legal services in a particular matter covered by the plan.

Comment

[1] Paragraph (b) prohibits a lawyer from soliciting professional employment by live person-to person contact when a significant motive for the lawyer's doing so is the lawyer's or the law firm's pecuniary gain. A lawyer's communication is not a solicitation if it is directed to the general public, such as through a billboard, an Internet banner advertisement, a website or a television commercial, or if it is in response to a request for information or is automatically generated in response to electronic searches.

[2] "Live person-to-person contact" means in-person, face-to-face, live telephone and other real-time visual or auditory person-to-person communications, where the person is subject to a direct personal encounter without time for reflection. Such person-to-person, prohibited contact does not include chat rooms, text messages, tweets, Facebook, or other written communications that recipients may easily disregard. The contents of live person-to-person contact can be disputed and may not be subject to third-party scrutiny. Consequently, they are much more likely to approach (and occasionally cross) the dividing line between accurate representations and those that are false, misleading or involve coercion, duress or harassment.

[3] The potential for overreaching inherent in live person-to-person contact, justifies its prohibition, particularly since lawyers have alternative means of conveying necessary information. In particular, communications can be mailed or transmitted by email or other electronic means that do not violate other laws. These forms of communications make it possible for the public to be informed about the need for legal services, and about the qualifications of available lawyers and law firms, without subjecting the public to live person-to-person persuasion that may overwhelm a person's judgment.

[4] A solicitation that contains false or misleading information within the meaning of Rule 7.1, that involves coercion, duress or harassment within the meaning of Rule 7.3(c)(2), or that involves contact with someone who has made known to the lawyer a desire not to be solicited by the lawyer within the meaning of Rule 7.3(c)(1) is prohibited.

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

Rule 7.4. Communication of Fields of Practice.

Reserved.

Rule 7.5. Firm Names and Letterheads.

Reserved.

Tab 6

Rule 5.4. Professional Independence of a Lawyer.

(a) A lawyer or law firm shall not share legal fees with a nonlawyer, except that:

(a)(1) an agreement by a lawyer with the lawyer's firm, partner or associate may provide for the payment of money, over a reasonable period of time after the lawyer's death, to the lawyer's estate or to one or more specified persons;

(a)(2)(i) a lawyer who purchases the practice of a deceased, disabled or disappeared lawyer may, pursuant to the provisions of Rule 1.17, pay to the estate or other representative of that lawyer the agreed-upon purchase price; and

(a)(2)(ii) a lawyer who undertakes to complete unfinished legal business of a deceased lawyer may pay to the estate of the deceased lawyer that proportion of the total compensation which fairly represents the services rendered by the deceased lawyer; and

(a)(3) a lawyer or law firm may include nonlawyer employees in a compensation or retirement plan, even though the plan is based in whole or in part on a profit-sharing arrangement.

(b) A lawyer shall not form a partnership with a nonlawyer if any of the activities of the partnership consist of the practice of law.

(c) A lawyer shall not permit a person who recommends, employs or pays the lawyer to render legal services for another to direct or regulate the lawyer's professional judgment in rendering such legal services.

(d) A lawyer shall not practice with or in the form of a professional corporation or association authorized to practice law for a profit, if:

(d)(1) a nonlawyer owns any interest therein, except that a fiduciary representative of the estate of a lawyer may hold the stock or interest of the lawyer for a reasonable time during administration;

(d)(2) a nonlawyer is a corporate director or officer thereof or occupies the position of similar responsibility in any form of association other than a corporation; or

(d)(3) a nonlawyer has the right to direct or control the professional judgment of a lawyer.

(e) A lawyer may practice in a non-profit corporation which is established to serve the public interest provided that the nonlawyer directors and officers of such corporation do not interfere with the independent professional judgment of the lawyer.

Comment

[1] The provisions of this Rule express traditional limitations on sharing fees. These limitations are to protect the lawyer's professional independence of judgment. Where someone other than the client pays the lawyer's fee or salary, or recommends employment of the lawyer, that arrangement does not modify the lawyer's obligation to the client. As stated in paragraph (c), such arrangements should not interfere with the lawyer's professional judgment.

[2] The Rule also expresses traditional limitations on permitting a third party to direct or regulate the lawyer’s professional judgment in rendering legal services to another. See also Rule 1.8(f) (lawyer may accept compensation from a third party as long as there is no interference with the lawyer’s independent professional judgment and the client gives informed consent)

[2a] Paragraph (a)(4) of the ABA Model Rule was not adopted because it is inconsistent with the provisions of Rule 7.2(b), which prohibit the sharing of attorney’s fees. Rule 5.4(e) addresses a lawyer practicing in a non-profit corporation that serves the public interest. There is no similar provision in the ABA Model Rules.

Tab 7

Rule 5.5. Unauthorized Practice of Law; Multijurisdictional Practice of Law.

(a) A lawyer shall not practice law in a jurisdiction in violation of the regulation of the legal profession in that jurisdiction, or assist another in doing so.

(b) A lawyer who is not admitted to practice in this jurisdiction shall not:

(b)(1) except as authorized by these Rules or other law, establish an office or other systematic and continuous presence in this jurisdiction for the practice of law; or

(b)(2) hold out to the public or otherwise represent that the lawyer is admitted to practice law in this jurisdiction.

(c) A lawyer admitted 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 that:

(c)(1) are undertaken in association with a lawyer who is admitted to practice in this jurisdiction and who actively participates in the matter;

(c)(2) are in or reasonably related to a pending or potential proceeding before a tribunal in this or another jurisdiction, if the lawyer, or a person the lawyer is assisting, is authorized by law or order to appear in such proceeding or reasonably expects to be so authorized;

(c)(3) are in or reasonably related to a pending or potential arbitration, mediation or other alternative dispute resolution proceeding in this or another jurisdiction, if the services arise out of or are reasonably related to the lawyer's practice in a jurisdiction in which the lawyer is admitted to practice and are not services for which the forum requires pro hac vice admission; or

(c)(4) are not within paragraphs (c)(2) or (c)(3) and arise out of or are reasonably related to the lawyer's practice in a jurisdiction in which the lawyer is admitted to practice.

(d) A lawyer admitted in another United States jurisdiction and not disbarred or suspended from practice in any jurisdiction may provide legal services through an office or other systematic and continuous presence in this jurisdiction without admission to the Utah State Bar if:

(d)(1) the services are provided to the lawyer's employer or its organizational affiliates while the lawyer has a pending application for admission to the Utah State Bar and are not services for which the forum requires pro hac vice admission; or

(d)(2) the services provided are authorized by specific federal or Utah law or by applicable rule.

Comment

[1] A lawyer may practice law only in a jurisdiction in which the lawyer is authorized to practice. A lawyer may be admitted to practice law in a jurisdiction on a regular basis or may be authorized by court rule or order or by law to practice for a limited purpose or on a restricted basis. Paragraph (a) applies to unauthorized practice of law by a lawyer, whether through the lawyer's direct action or by the lawyer's assisting another person. For example, a lawyer may not assist a person in practicing law in violation of the rules governing professional conduct in that person's jurisdiction.

[2] The definition of the practice of law is established by law and varies from one jurisdiction to another. The "practice of law" in Utah is defined in Rule 14-802(b)(1), Authorization to Practice Law, of the Supreme Court Rules of Professional Practice. This Rule does not prohibit a lawyer from employing the services of paraprofessionals and delegating functions to them, so long as the lawyer supervises the delegated work and retains responsibility for their work. See Rule 5.3.

[2a] The Utah rule modifies the second sentence of ABA Comment [2] to reflect and be consistent with Rule 14-802(b)(1), Authorization to Practice Law, of the Supreme Court Rules of Professional Practice, which both defines the "practice of law" and expressly authorizes nonlawyers to engage in some aspects of the practice of law as long as their activities are confined to the categories of services specified in that rule.

[3] A lawyer may provide professional advice and instruction to nonlawyers whose employment requires knowledge of the law, for example, claims adjusters, employees of financial or commercial institutions, social workers, accountants and persons employed in government agencies. Lawyers also may assist independent nonlawyers, such as paraprofessionals, who are authorized by the law of a jurisdiction to provide particular law-related services. In addition, a lawyer may counsel nonlawyers who wish to proceed pro se.

[4] Other than as authorized by law or this Rule, a lawyer who is not admitted to practice generally in this jurisdiction violates paragraph (b)(1) 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(a) and 7.5(b).

[5] 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 is not so identified does not imply that the conduct is or is not authorized. With the exception of paragraphs (d)(1) and (d)(2), this Rule does not authorize a lawyer to establish an office or other systematic and continuous presence in this jurisdiction without being admitted to practice generally here.

[6] There is no single test to determine whether a lawyer's services are provided on a "temporary basis" in this jurisdiction and may therefore be permissible under paragraph (c). Services may be "temporary" even though the lawyer provides services in this jurisdiction on a recurring basis, or for an extended period of time, as when the lawyer is representing a client in a single lengthy negotiation or litigation.

[7] Paragraphs (c) and (d) apply to lawyers who are admitted to practice law in any United States jurisdiction, which includes the District of Columbia and any state, territory or commonwealth of the United States. The word "admitted" in paragraphs (c) and (d) contemplates that the lawyer is authorized to practice in the jurisdiction in which the lawyer is admitted and excludes a lawyer who while technically admitted is not authorized to practice, because, for example, the lawyer is on inactive status.

[8] Paragraph (c)(1) recognizes that the interests of clients and the public are protected if a lawyer admitted only in another jurisdiction associates with a lawyer licensed to practice in this jurisdiction. For this paragraph to apply, however, the lawyer admitted to practice in this jurisdiction must actively participate in and share responsibility for the representation of the client.

[9] Lawyers not admitted to practice generally in a jurisdiction may be authorized by law or order of a tribunal or an administrative agency to appear before the tribunal or agency. This authority may be granted pursuant to formal rules governing admission pro hac vice or pursuant to informal practice of the tribunal or agency. Under paragraph (c)(2), a lawyer does not violate this Rule when the lawyer appears before a tribunal or agency pursuant to such authority. To the extent that a court rule or other law of this jurisdiction requires a lawyer who is not admitted to practice in this jurisdiction to obtain admission pro hac vice before appearing before a tribunal or administrative agency, this Rule requires the lawyer to obtain that authority.

[10] Paragraph (c)(2) also provides that a lawyer rendering services in this jurisdiction on a temporary basis does not violate this Rule when the lawyer engages in conduct in anticipation of a proceeding or hearing in a jurisdiction in which the lawyer is authorized to practice law or in which the lawyer reasonably expects to be admitted pro hac vice. Examples of such conduct include meetings with the client, interviews of potential witnesses and the review of documents. Similarly, a lawyer admitted only in another jurisdiction may engage in conduct temporarily in this jurisdiction in connection with pending litigation in another jurisdiction in which the lawyer is or reasonably expects to be authorized to appear, including taking depositions in this jurisdiction.

[11] When a lawyer has been or reasonably expects to be admitted to appear before a court or administrative agency, paragraph (c)(2) also permits conduct by lawyers who are associated with that lawyer in the matter, but who do not expect to appear before the court or administrative agency. For example, subordinate lawyers may conduct research, review documents and attend meetings with witnesses in support of the lawyer responsible for the litigation.

[12] Paragraph (c)(3) permits a lawyer admitted to practice law in another jurisdiction to perform services on a temporary basis in this jurisdiction if those services are in or reasonably related to a pending or potential arbitration, mediation or other alternative dispute resolution proceeding in this or another jurisdiction, if the services arise out of or are reasonably related to the lawyer's practice in a jurisdiction in which the lawyer is admitted to practice. The lawyer, however, must obtain admission pro hac vice in the case of a court-annexed arbitration or mediation or otherwise if court rules or law so require.

[13] Paragraph (c)(4) permits a lawyer admitted in another jurisdiction to provide certain legal services on a temporary basis in this jurisdiction that arise out of or are reasonably related to the lawyer's practice in a jurisdiction in which the lawyer is admitted but are not within paragraphs (c)(2) or (c)(3).

[13a] The last sentence in Comment [13] to ABA Model Rule 5.5 has been omitted to comport with Utah's definition of the "practice of law" in Rule 14-802(b)(1).

[14] Paragraphs (c)(3) and (c)(4) require that the services arise out of or be reasonably related to the lawyer's practice in a jurisdiction in which the lawyer is admitted. A variety of factors evidence such a relationship. The lawyer's client may have been previously represented by the lawyer or may be resident in or have substantial contacts with the jurisdiction in which the lawyer is admitted. The matter, although involving other jurisdictions, may have a significant connection with that jurisdiction. In other cases, significant aspects of the lawyer's work might be conducted in that jurisdiction or a significant aspect of the matter may involve the law of that jurisdiction. The necessary relationship might arise when the client's activities or the legal issues involve multiple jurisdictions, such as when the officers of a multinational corporation survey potential business sites and seek the services of their lawyer in assessing the relative merits of each. In addition, the services may draw on the lawyer's recognized expertise developed through the regular practice of law on behalf of clients in matters involving a particular body of federal, nationally-uniform, foreign or international law.

[15] Paragraph (d) identifies two circumstances in which a lawyer who is admitted to practice in another United States jurisdiction, and is not disbarred or suspended from practice in any jurisdiction, may establish an office or other systematic and continuous presence in this jurisdiction for the practice of law as well as provide legal services on a temporary basis. Except as provided in paragraphs (d)(1) and (d)(2), a lawyer who is admitted to practice law in another jurisdiction and who establishes an office or other systematic or continuous presence in this jurisdiction must become admitted to practice law generally in this jurisdiction.

[15a] Utah's Rule 5.5(d) differs from the ABA Model Rule by requiring a person providing services to the lawyer's employer to have submitted an application for admission to the Bar, such as an application for admission of attorney applicants under Supreme Court Rules of Professional Practice, Rule 14-704; admission by motion under Rule 14-705; or admission as House Counsel under Rule 14-719.

[15b] Utah Rule 5.5 does not adopt the ABA's provisions dealing with foreign lawyers, as other rules in Article 7 of the Rules Governing the Utah State Bar cover this matter.

[16] Paragraph (d)(1) applies to a lawyer who is employed by a client to provide legal services to the client or its organizational affiliates, i.e., entities that control, are controlled by or are under common control with the employer. This paragraph does not authorize the provision of personal legal services to the employer's officers or employees. The paragraph applies to in-house corporate lawyers, government lawyers and others who are employed to render legal services to the employer. The lawyer's ability to represent the employer outside the jurisdiction in which the lawyer is licensed generally serves the interests of the employer and does not create an unreasonable risk to the client and others because the employer is well situated to assess the lawyer's qualifications and the quality of the lawyer's work.

[17] If an employed lawyer establishes an office or other systematic presence in this jurisdiction for the purpose of rendering legal services to the employer under paragraph (d)(1), the lawyer is subject to Utah admission and licensing requirements, including assessments for annual licensing fees and client protection funds, and mandatory continuing legal education.

[18] Paragraph (d)(2) recognizes that a lawyer may provide legal services in a jurisdiction in which the lawyer is not licensed when authorized federal or other law, which includes statute, court rule, executive regulation or judicial precedent.

[18a] The Utah version of Paragraph (d)(2) clarifies that a lawyer not admitted to practice in Utah may provide legal services under that paragraph only if the lawyer can cite specific federal or state law or an applicable rule that authorizes the services. See, e.g., Rule DUCivR 83-1.1, Rules of Practice of the United States District Court of the District of Utah; Rule 14-804 of the Supreme Court Rules of Professional Practice, admission for military-lawyer practice; Rule 14-719(d)(2), which provides a six-month period during which an in-house counsel is authorized to practice before submitting a House Counsel application; practice as a patent attorney before the United States Patent and Trademark Office.

[19] A lawyer who practices law in this jurisdiction pursuant to paragraphs (c) or (d) or otherwise is subject to the disciplinary authority of this jurisdiction. See Rule 8.5(a).

[20] In some circumstances, a lawyer who practices law in this jurisdiction pursuant to paragraphs (c) or (d) may have to inform the client that the lawyer is not licensed to practice law in this jurisdiction. For example, that may be required

when the representation occurs primarily in this jurisdiction and requires knowledge of the law of this jurisdiction. See Rule 1.4(b).

[21] Paragraphs (c) and (d) do not authorize communications advertising legal services in this jurisdiction by lawyers who are admitted to practice in other jurisdictions. Whether and how lawyers may communicate the availability of their services in this jurisdiction are governed by Rules 7.1 to 7.5.