

**California Attorney Advertising Rules**  
**(includes relevant sections from the RPC, B&P Code  
and proposed new RPC Rules)**

# California Rules of Professional Conduct

## Rule 1-400. Advertising and Solicitation

(A) For purposes of this rule, "communication" means any message or offer made by or on behalf of a member concerning the availability for professional employment of a member or a law firm directed to any former, present, or prospective client, including but not limited to the following:

- (1) Any use of firm name, trade name, fictitious name, or other professional designation of such member or law firm; or
- (2) Any stationery, letterhead, business card, sign, brochure, or other comparable written material describing such member, law firm, or lawyers; or
- (3) Any advertisement (regardless of medium) of such member or law firm directed to the general public or any substantial portion thereof; or
- (4) Any unsolicited correspondence from a member or law firm directed to any person or entity.

(B) For purposes of this rule, a "solicitation" means any communication:

- (1) Concerning the availability for professional employment of a member or a law firm in which a significant motive is pecuniary gain; and
- (2) Which is;
  - (a) delivered in person or by telephone, or
  - (b) directed by any means to a person known to the sender to be represented by counsel in a matter which is a subject of the communication.

(C) A solicitation shall not be made by or on behalf of a member or law firm to a prospective client with whom the member or law firm has no family or prior professional relationship, unless the solicitation is protected from abridgment by the Constitution of the United States or by the Constitution of the State of California. A solicitation to a former or present client in the discharge of a member's or law firm's professional duties is not prohibited.

(D) A communication or a solicitation (as defined herein) shall not:

- (1) Contain any untrue statement; or

- (2) Contain any matter, or present or arrange any matter in a manner or format which is false, deceptive, or which tends to confuse, deceive, or mislead the public; or
- (3) Omit to state any fact necessary to make the statements made, in the light of circumstances under which they are made, not misleading to the public; or
- (4) Fail to indicate clearly, expressly, or by context, that it is a communication or solicitation, as the case may be; or
- (5) Be transmitted in any manner which involves intrusion, coercion, duress, compulsion, intimidation, threats, or vexatious or harassing conduct.
- (6) State that a member is a "certified specialist" unless the member holds a current certificate as a specialist issued by the Board of Legal Specialization, or any other entity accredited by the State Bar to designate specialists pursuant to standards adopted by the Board of Governors, and states the complete name of the entity which granted certification.

(E) The Board of Governors of the State Bar shall formulate and adopt standards as to communications which will be presumed to violate this rule 1-400. The standards shall only be used as presumptions affecting the burden of proof in disciplinary proceedings involving alleged violations of these rules. "Presumption affecting the burden of proof" means that presumption defined in Evidence Code sections 605 and 606. Such standards formulated and adopted by the Board, as from time to time amended, shall be effective and binding on all members.

(F) A member shall retain for two years a true and correct copy or recording of any communication made by written or electronic media. Upon written request, the member shall make any such copy or recording available to the State Bar, and, if requested, shall provide to the State Bar evidence to support any factual or objective claim contained in the communication.

(Former rule 1-400 (D)(6) repealed by order of the Supreme Court effective November 30, 1992. New rule 1-400 (D)(6) added by order of the Supreme Court effective June 1, 1997.)

**Standards:**

Pursuant to rule 1-400(E) the Board of Governors of the State Bar has adopted the following standards, effective May 27, 1989, unless noted otherwise, as forms of "communication" defined in rule 1-400(A) which are presumed to be in violation of rule 1-400:

- (1) A "communication" which contains guarantees, warranties, or predictions regarding the result of the representation.

- (2) A "communication" which contains testimonials about or endorsements of a member unless such communication also contains an express disclaimer such as "this testimonial or endorsement does not constitute a guarantee, warranty, or prediction regarding the outcome of your legal matter."
- (3) A "communication" which is delivered to a potential client whom the member knows or should reasonably know is in such a physical, emotional, or mental state that he or she would not be expected to exercise reasonable judgment as to the retention of counsel.
- (4) A "communication" which is transmitted at the scene of an accident or at or en route to a hospital, emergency care center, or other health care facility.
- (5) A "communication," except professional announcements, seeking professional employment for pecuniary gain, which is transmitted by mail or equivalent means which does not bear the word "Advertisement," "Newsletter" or words of similar import in 12 point print on the first page. If such communication, including firm brochures, newsletters, recent legal development advisories, and similar materials, is transmitted in an envelope, the envelope shall bear the word "Advertisement," "Newsletter" or words of similar import on the outside thereof.
- (6) A "communication" in the form of a firm name, trade name, fictitious name, or other professional designation which states or implies a relationship between any member in private practice and a government agency or instrumentality or a public or non-profit legal services organization.
- (7) A "communication" in the form of a firm name, trade name, fictitious name, or other professional designation which states or implies that a member has a relationship to any other lawyer or a law firm as a partner or associate, or officer or shareholder pursuant to Business and Professions Code sections 6160-6172 unless such relationship in fact exists.
- (8) A "communication" which states or implies that a member or law firm is "of counsel" to another lawyer or a law firm unless the former has a relationship with the latter (other than as a partner or associate, or officer or shareholder pursuant to Business and Professions Code sections 6160-6172) which is close, personal, continuous, and regular.
- (9) A "communication" in the form of a firm name, trade name, fictitious name, or other professional designation used by a member or law firm in private practice which differs materially from any other such designation used by such member or law firm at the same time in the same community.
- (10) A "communication" which implies that the member or law firm is participating in a lawyer referral service which has been certified by the State Bar

of California or as having satisfied the Minimum Standards for Lawyer Referral Services in California, when that is not the case.

(11) A "communication" which states or implies that a member is a "certified specialist" unless such communication also states the complete name of the entity which granted the certification as a specialist. (Repealed by order of the Supreme Court, effective June 1, 1997. See rule 1-400(D)(6).)

(12) A "communication," except professional announcements, in the form of an advertisement primarily directed to seeking professional employment primarily for pecuniary gain transmitted to the general public or any substantial portion thereof by mail or equivalent means or by means of television, radio, newspaper, magazine or other form of commercial mass media which does not state the name of the member responsible for the communication. When the communication is made on behalf of a law firm, the communication shall state the name of at least one member responsible for it.

(13) A "communication" which contains a dramatization unless such communication contains a disclaimer which states "this is a dramatization" or words of similar import.

(14) A "communication" which states or implies "no fee without recovery" unless such communication also expressly discloses whether or not the client will be liable for costs.

(15) A "communication" which states or implies that a member is able to provide legal services in a language other than English unless the member can actually provide legal services in such language or the communication also states in the language of the communication (a) the employment title of the person who speaks such language and (b) that the person is not a member of the State Bar of California, if that is the case.

(16) An unsolicited "communication" transmitted to the general public or any substantial portion thereof primarily directed to seeking professional employment primarily for pecuniary gain which sets forth a specific fee or range of fees for a particular service where, in fact, the member charges a greater fee than advertised in such communication within a period of 90 days following dissemination of such communication, unless such communication expressly specifies a shorter period of time regarding the advertised fee. Where the communication is published in the classified or "yellow pages" section of telephone, business or legal directories or in other media not published more frequently than once a year, the member shall conform to the advertised fee for a period of one year from initial publication, unless such communication expressly specifies a shorter period of time regarding the advertised fee.

(Amended by order of Supreme Court, operative September 14, 1992. Standard (5) amended by the Board of Governors, effective May 11, 1994. Standards (12) - (16) added by the Board of Governors, effective May 11, 1994.)

## **California Business & Professions Code § 6157-6159.2**

6157. As used in this article, the following definitions apply:

(a) "Member" means a member in good standing of the State Bar and includes any agent of the member and any law firm or law corporation doing business in the State of California.

(b) "Lawyer" means a member of the State Bar or a person who is admitted in good standing and eligible to practice before the bar of any United States court or the highest court of the District of Columbia or any state, territory, or insular possession of the United States, or is licensed to practice law in, or is admitted in good standing and eligible to practice before the bar of the highest court of, a foreign country or any political subdivision thereof, and includes any agent of the lawyer, law firm, or law corporation doing business in the state.

(c) "Advertise" or "advertisement" means any communication, disseminated by television or radio, by any print medium, including, but not limited to, newspapers and billboards, or by means of a mailing directed generally to members of the public and not to a specific person, that solicits employment of legal services provided by a member, and is directed to the general public and is paid for by, or on the behalf of, an attorney.

(d) "Electronic medium" means television, radio, or computer networks.

6157.1. No advertisement shall contain any false, misleading, or deceptive statement or omit to state any fact necessary to make the statements made, in light of circumstances under which they are made, not false, misleading, or deceptive.

6157.2. No advertisement shall contain or refer to any of the following:

(a) Any guarantee or warranty regarding the outcome of a legal matter as a result of representation by the member.

(b) Statements or symbols stating that the member featured in the advertisement can generally obtain immediate cash or quick settlements.

(c) (1) An impersonation of the name, voice, photograph, or electronic image of any person other than the lawyer, directly or implicitly purporting to be that of a lawyer.

(2) An impersonation of the name, voice, photograph, or electronic image of any person, directly or implicitly purporting to be a client of the member featured in the advertisement, or a

dramatization of events, unless disclosure of the impersonation or dramatization is made in the advertisement.

(3) A spokesperson, including a celebrity spokesperson, unless there is disclosure of the spokesperson's title.

(d) A statement that a member offers representation on a contingent basis unless the statement also advises whether a client will be held responsible for any costs advanced by the member when no recovery is obtained on behalf of the client. If the client will not be held responsible for costs, no disclosure is required.

6157.3. Any advertisement made on behalf of a member, which is not paid for by the member, shall disclose any business relationship, past or present, between the member and the person paying for the advertisement.

6157.4. Any advertisement that is created or disseminated by a lawyer referral service shall disclose whether the attorneys on the organization's referral list, panel, or system, paid any consideration, other than a proportional share of actual cost, to be included on that list, panel, or system.

6157.5. (a) All advertisements published, distributed, or broadcasted by or on behalf of a member seeking professional employment for the member in providing services relating to immigration or naturalization shall include a statement that he or she is an active member of the State Bar, licensed to practice law in this state. If the advertisement seeks employment for a law firm or law corporation employing more than one attorney, the advertisement shall include a statement that all the services relating to immigration and naturalization provided by the firm or corporation shall be provided by an active member of the State Bar or by a person under the supervision of an active member of the State Bar. This subdivision shall not apply to classified or "yellow pages" listings in a telephone or business directory of three lines or less that state only the name, address, and telephone number of the listed entity.

(b) If the advertisement is in a language other than English, the statement required by subdivision (a) shall be in the same language as the advertisement.

(c) This section shall not apply to members employed by public agencies or by nonprofit entities registered with the Secretary of

State.

(d) A violation of this section by a member shall be cause for discipline by the State Bar.

6158. In advertising by electronic media, to comply with Sections 61571.1 and 6157.2, the message as a whole may not be false, misleading, or deceptive, and the message as a whole must be factually substantiated. The message means the effect in combination of the spoken word, sound, background, action, symbols, visual image, or any other technique employed to create the message. Factually substantiated means capable of verification by a credible source.

6158.1. There shall be a rebuttable presumption affecting the burden of producing evidence that the following messages are false, misleading, or deceptive within the meaning of Section 6158:

(a) A message as to the ultimate result of a specific case or cases presented out of context without adequately providing information as to the facts or law giving rise to the result.

(b) The depiction of an event through methods such as the use of displays of injuries, accident scenes, or portrayals of other injurious events which may or may not be accompanied by sound effects and which may give rise to a claim for compensation.

(c) A message referring to or implying money received by or for a client in a particular case or cases, or to potential monetary recovery for a prospective client. A reference to money or monetary recovery includes, but is not limited to, a specific dollar amount, characterization of a sum of money, monetary symbols, or the implication of wealth.

6158.2. The following information shall be presumed to be in compliance with this article for purposes of advertising by electronic media, provided the message as a whole is not false, misleading, or deceptive:

(a) Name, including name of law firm, names of professional associates, addresses, telephone numbers, and the designation "lawyer," "attorney," "law firm," or the like.

(b) Fields of practice, limitation of practice, or specialization.

(c) Fees for routine legal services, subject to the requirements of subdivision (d) of Section 6157.2 and the Rules of Professional

Conduct.

- (d) Date and place of birth.
- (e) Date and place of admission to the bar of state and federal courts.
- (f) Schools attended, with dates of graduation, degrees, and other scholastic distinctions.
- (g) Public or quasi-public offices.
- (h) Military service.
- (i) Legal authorship.
- (j) Legal teaching positions.
- (k) Memberships, offices, and committee assignments in bar associations.
- (l) Memberships and offices in legal fraternities and legal societies.
- (m) Technical and professional licenses.
- (n) Memberships in scientific, technical, and professional associations and societies.
- (o) Foreign language ability of the advertising lawyer or a member of lawyer's firm.

6158.3. In addition to any disclosure required by Section 6157.2, Section 6157.3, and the Rules of Professional Conduct, the following disclosure shall appear in advertising by electronic media. Use of the following disclosure alone may not rebut any presumption created in Section 6158.1. If an advertisement in the electronic media conveys a message portraying a result in a particular case or cases, the advertisement must state, in either an oral or printed communication, either of the following disclosures: The advertisement must adequately disclose the factual and legal circumstances that justify the result portrayed in the message, including the basis for liability and the nature of injury or damage sustained, or the advertisement must state that the result portrayed in the advertisement was dependent on the facts of that case, and that the results will differ if based on different facts.

6158.4. (a) Any person claiming a violation of Section 6158, 6158.1, or 6158.3 may file a complaint with the State Bar that states the name of the advertiser, a description of the advertisement claimed to violate these sections, and that specifically identifies the alleged violation. A copy of the complaint shall be served simultaneously upon the advertiser. The advertiser shall have nine days from the date of service of the complaint to voluntarily

withdraw from broadcast the advertisement that is the subject of the complaint. If the advertiser elects to withdraw the advertisement, the advertiser shall notify the State Bar of that fact, and no further action may be taken by the complainant. The advertiser shall provide a copy of the complained of advertisement to the State Bar for review within seven days of service of the complaint. Within 21 days of the delivery of the complained of advertisement, the State Bar shall determine whether substantial evidence of a violation of these sections exists. The review shall be conducted by a State Bar attorney who has expertise in the area of lawyer advertising.

(b) (1) Upon a State Bar determination that substantial evidence of a violation exists, if the member or certified lawyer referral service withdraws that advertisement from broadcast within 72 hours, no further action may be taken by the complainant.

(2) Upon a State Bar determination that substantial evidence of a violation exists, if the member or certified lawyer referral service fails to withdraw the advertisement within 72 hours, a civil enforcement action brought pursuant to subdivision (e) may be commenced within one year of the State Bar decision. If the member or certified lawyer referral service withdraws an advertisement upon a State Bar determination that substantial evidence of a violation exists and subsequently rebroadcasts the same advertisement without a finding by the trier of fact in an action brought pursuant to subdivision (c) or (e) that the advertisement does not violate Section 6158, 6158.1, or 6158.3, a civil enforcement action may be commenced within one year of the rebroadcast.

(3) Upon a determination that substantial evidence of a violation does not exist, the complainant is barred from bringing a civil enforcement action pursuant to subdivision (e), but may bring an action for declaratory relief pursuant to subdivision (c).

(c) Any member or certified lawyer referral service who was the subject of a complaint and any complainant affected by the decision of the State Bar may bring an action for declaratory relief in the superior court to obtain a judicial declaration of whether Section 6158, 6158.1, or 6158.3 has been violated, and, if applicable, may also request injunctive relief. Any defense otherwise available at law may be raised for the first time in the declaratory relief action, including any constitutional challenge. Any civil enforcement action filed pursuant to subdivision (e) shall be stayed pending the resolution of the declaratory relief action. The action shall be defended by the real party in interest. The State Bar shall not be considered a party to the action unless it elects to intervene in the action.

(1) Upon a State Bar determination that substantial evidence of a violation exists, if the complainant or the member or certified lawyer referral service brings an action for declaratory relief to

obtain a judicial declaration of whether the advertisement violates Section 6158, 6158.1, or 6158.3, and the court declares that the advertisement violates one or more of the sections, a civil enforcement action pursuant to subdivision (e) may be filed or maintained if the member or certified lawyer referral service failed to withdraw the advertisement within 72 hours of the State Bar determination. The decision of the court that an advertisement violates Section 6158, 6158.1, or 6158.3 shall be binding on the issue of whether the advertisement is unlawful in any pending or prospective civil enforcement action brought pursuant to subdivision (e) if that binding effect is supported by the doctrine of collateral estoppel or res judicata.

If, in that declaratory relief action, the court declares that the advertisement does not violate Section 6158, 6158.1, or 6158.3, the member or lawyer referral service may broadcast the advertisement. The decision of the court that an advertisement does not violate Section 6158, 6158.1, or 6158.3 shall bar any pending or prospective civil enforcement action brought pursuant to subdivision (e) if that prohibitive effect is supported by the doctrine of collateral estoppel or res judicata.

(2) If, following a State Bar determination that does not find substantial evidence that an advertisement violates Section 6158, 6158.1, or 6158.3, the complainant or the member or certified lawyer referral service brings an action for declaratory relief to obtain a judicial declaration of whether the advertisement violates Section 6158, 6158.1, or 6158.3, and the court declares that the advertisement violates one or more of the sections, a civil enforcement action pursuant to subdivision (e) may be filed or maintained if the member or certified lawyer referral service broadcasts the same advertisement following the decision in the declaratory relief action. The decision of the court that an advertisement violates Section 6158, 6158.1, or 6158.3 shall be binding on the issue of whether the advertisement is unlawful in any pending or prospective civil enforcement action brought pursuant to subdivision (e) if that binding effect is supported by the doctrine of collateral estoppel or res judicata.

If, in that declaratory relief action, the court declares that the advertisement does not violate Section 6158, 6158.1, or 6158.3, the member or lawyer referral service may continue broadcast of the advertisement. The decision of the court that an advertisement does not violate Section 6158, 6158.1, or 6158.3 shall bar any pending or prospective civil enforcement action brought pursuant to subdivision (e) if that prohibitive effect is supported by the doctrine of collateral estoppel or res judicata.

(d) The State Bar review procedure shall apply only to members and certified referral services. A direct civil enforcement action for

a violation of Section 6158, 6158.1, or 6158.3 may be maintained against any other advertiser after first giving 14 days' notice to the advertiser of the alleged violation. If the advertiser does not withdraw from broadcast the advertisement that is the subject of the notice within 14 days of service of the notice, a civil enforcement action pursuant to subdivision (e) may be commenced. The civil enforcement action shall be commenced within one year of the date of the last publication or broadcast of the advertisement that is the subject of the action.

(e) Subject to Section 6158.5, a violation of Section 6158, 6158.1, or 6158.3 shall be cause for a civil enforcement action brought by any person residing within the State of California for an amount up to five thousand dollars (\$5,000) for each individual broadcast that violates Section 6158, 6158.1, or 6158.3. Venue shall be in a county where the advertisement was broadcast.

(f) In any civil action brought pursuant to this section, the matter shall be determined according to the law and procedure relating to the trial of civil actions, including trial by jury, if demanded.

(g) The decision of the State Bar pursuant to subdivision (a) shall be admissible in the civil enforcement action brought pursuant to subdivision (e). However, the State Bar shall not be a party or a witness in either a declaratory relief proceeding brought pursuant to subdivision (c) or the civil enforcement action brought pursuant to subdivision (e). Additionally, no direct action may be filed against the State Bar challenging the State Bar's decision pursuant to subdivision (a).

(h) Amounts recovered pursuant to this section shall be paid into the Client Security Fund maintained by the State Bar.

(i) In any civil action brought pursuant to this section, the court shall award attorney's fees pursuant to Section 1021.5 of the Code of Civil Procedure if the court finds that the action has resulted in the enforcement of an important public interest or that a significant benefit has been conferred on the public.

(j) The State Bar shall maintain records of all complainants and complaints filed pursuant to subdivision (a) for a period of seven years. If a complainant files five or more unfounded complaints within seven years, the complainant shall be considered a vexatious litigant for purposes of this section. The State Bar shall require any person deemed a vexatious litigant to post security in the minimum amount of twenty-five thousand dollars (\$25,000) prior to considering any complaint filed by that person and shall refrain from taking any action until the security is posted. In any civil action arising from this section brought by a person deemed a vexatious litigant, the defendant may advise the court and trier of fact that the plaintiff is deemed to be a vexatious litigant under the

provisions of this section and disclose the basis for this determination.

(k) Nothing in this section shall restrict any other right available under existing law or otherwise available to a citizen seeking redress for false, misleading, or deceptive advertisements.

6158.5. This article applies to all lawyers, members, law partnerships, law corporations, entities subject to regulation under Section 6155, advertising collectives, cooperatives, or other individuals, including nonlawyers, or groups advertising the availability of legal services. Subdivisions (a) to (k), inclusive, of Section 6158.4 do not apply to qualified legal services projects as defined in Article 14 (commencing with Section 6210) and nonprofit lawyer referral services certified under Section 6155. Sections 6157 to 6158.5, inclusive, do not apply to the media in which the advertising is displayed or to an advertising agency that prepares the contents of an advertisement and is not directly involved in the formation or operation of lawyer advertising collectives or cooperatives, referral services, or other groups existing primarily for the purpose of advertising the availability of legal services or making referrals to attorneys.

6158.7. A violation of Section 6158, 6158.1, or 6158.3 by a member shall be cause for discipline by the State Bar. In addition to the existing grounds for initiating a disciplinary proceeding set forth in a statute or in the Rules of Professional Conduct, the State Bar may commence an investigation based upon a complaint filed by a person pursuant to Section 6158.4. The State Bar's decision pursuant to subdivision (a) of Section 6158.4 shall be admissible, but shall not be determinative, in any disciplinary proceeding brought as a result of that complaint.

6159. The court shall report the name, address, and professional license number of any person found in violation of this article to the appropriate professional licensing agency for review and possible disciplinary action.

6159.1. A true and correct copy of any advertisement made by a person or member shall be retained for one year by the person or

member who pays for an advertisement soliciting employment of legal services.

6159.2. (a) Nothing in this article shall be deemed to limit or preclude enforcement of any other provision of law, or of any court rule, or of the State Bar Rules of Professional Conduct.

(b) Nothing in this article shall limit the right of advertising protected under the Constitution of the State of California or of the United States. If any provision of this article is found to violate either Constitution, that provision is severable and the remaining provisions shall be enforceable without the severed provision.

**PROPOSED RULES (To replace 1-400)**

**Rule 7.1: Communications Concerning the Availability of Legal Services**

(a) For purposes of Rules 7.1 through 7.5, “communication” means any message or offer made by or on behalf of a lawyer concerning the availability for professional employment of a lawyer or a lawyer’s law firm directed to any former, present, or prospective client, including but not limited to the following:

- (1) Any use of firm name, trade name, fictitious name, or other professional designation of such lawyer or law firm; or
- (2) Any stationery, letterhead, business card, sign, brochure, domain name, Internet web page or web site, e-mail, other material sent or posted by electronic transmission, or other writing describing such lawyer or law firm; or
- (3) Any advertisement (regardless of medium) of such lawyer or law firm directed to the general public or any substantial portion thereof; or
- (4) Any unsolicited correspondence, electronic transmission, or other writing from a lawyer or law firm directed to any person or entity.

(b) A lawyer shall not make a false or misleading communication as defined herein.

(c) A communication is false or misleading if it:

- (1) Contains any untrue statement; or
- (2) Contains any misrepresentation of fact or law; or
- (3) Contains any matter, or presents or arranges any matter in a manner or format which is false, deceptive, or which confuses, deceives, or misleads the public; or
- (4) Omits to state any fact necessary to make the statements made, in the light of circumstances under which they are made, not misleading to the public.

(d) The Board of Governors of the State Bar may formulate and adopt standards as to communications which will be presumed to violate Rule 7.1, 7.2, 7.3, 7.4 or 7.5. The standards shall only be used as presumptions affecting the burden of proof in disciplinary proceedings involving alleged violations of these rules. “Presumption affecting the burden of proof” means that presumption defined in Evidence Code sections 605 and 606. Such standards formulated and adopted by the Board, as from time to time amended, shall be effective and binding on all lawyers.

## **Comment**

[1] This Rule governs all communications about the availability of legal services from lawyers and law firms, including advertising permitted by Rule 7.2.

Whatever means are used to make known a lawyer's services, statements about them must be truthful. The requirement of truthfulness in a communication under this Rule includes representations about the law.

[2] Rule 7.1 is also intended to prohibit truthful statements that are misleading. A truthful statement is misleading if it omits a fact necessary to make the lawyer's communication considered as a whole not materially misleading.

[3] 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 avoid creating unjustified expectations or otherwise misleading a prospective client.

[4] As used in paragraph (a), "writing" means any writing as defined in the Evidence Code.

[5] The list of communications under paragraphs (a)(1) through (a)(4) of this Rule is not intended to be exclusive. For example, a lawyer's intentionally misleading use of metatags to divert a prospective client to the web site of the lawyer or the lawyer's law firm would also be prohibited under this Rule.

[6] 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.

## **Standards**

Pursuant to Rule 7.1(d), the Board of Governors has adopted the following standards related to paragraph (b) of this Rule:

(1) A "communication" which contains guarantees, warranties, or predictions regarding the result of the representation.

(2) A "communication" which contains testimonials about or endorsements of a

lawyer unless such communication also contains an express disclaimer such as “this testimonial or endorsement does not constitute a guarantee, warranty, or prediction regarding the outcome of your legal matter.”

(3) A “communication” which contains a dramatization unless such communication contains a disclaimer which states “this is a dramatization” or words of similar import.

(4) A “communication” which states or implies “no fee without recovery” unless such communication also expressly discloses whether or not the client will be liable for costs.

(5) A “communication” which states or implies that a lawyer is able to provide legal services in a language other than English unless the lawyer can actually provide legal services in such language or the communication also states in the language of the communication (a) the employment title of the person who speaks such language and (b) that the person is not a member of the State Bar of California, if that is the case.

(6) An unsolicited “communication” transmitted to the general public or any substantial portion thereof primarily directed to seeking professional employment primarily for pecuniary gain which sets forth a specific fee or range of fees for a particular service where, in fact, the lawyer charges a greater fee than advertised in such communication within a period of 90 days following dissemination of such communication, unless such communication expressly specifies a shorter period of time regarding the advertised fee. Where the communication is published in the classified or “yellow pages” section of telephone, business or legal directories or in other media not published more frequently than once a year, the lawyer shall conform to the advertised fee for a period of one year from initial publication, unless such communication expressly specifies a shorter period of time regarding the advertised fee.

### **Rule 7.2: Advertising**

(a) Subject to the requirements of Rules 7.1 and 7.3, a lawyer may advertise services through any medium, including public media.

(b) A lawyer shall not give anything of value to a person for recommending the lawyer’s services except that a lawyer may (1) pay the reasonable costs of advertisements or communications permitted by this Rule;

(2) pay the usual charges of a legal services plan or a qualified lawyer referral service. A qualified lawyer referral service is a lawyer referral service established, sponsored and operated in accordance with the State Bar of

California's minimum standards for a lawyer referral service in California;

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

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

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

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

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

### **Comment**

[1] [RESERVED]

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

[3] This Rule permits advertising by electronic media, including but not limited to television, radio and the Internet. *But see* Rule 7.3(a) concerning real-time electronic communications with prospective clients.

[4] Neither this Rule nor Rule 7.3 is intended to prohibit communications authorized by law.

### *Paying Others to Recommend a Lawyer*

[5] Notwithstanding Rule 1-320(C)'s general prohibition on a lawyer giving or promising anything of value to a representative of a communication medium in return for publicity of the lawyer, paragraph (b)(1), allows a lawyer to pay for advertising and communications permitted by this Rule, including but not limited to the costs of print directory listings, on-line directory listings, newspaper ads, television and radio airtime, domain-name registrations, sponsorship fees, banner ads, and group advertising. A lawyer may also compensate employees, agents and vendors who are engaged to provide marketing or client-development services, such as publicists, public-relations personnel, business-development staff and website designers. See Rule 5.3 for the duties of lawyers and law firms with respect to the conduct of nonlawyers who prepare marketing materials for them.

[6] Paragraph (b)(2) is intended to permit a lawyer to pay the usual charges of a group or pre-paid legal service plan exempt from registration under Business & Professions Code, section 6155(c). Paragraph (b)(2) is also intended to permit a lawyer to pay the usual charges of a qualified lawyer referral service established, sponsored and operated in accordance with the State Bar of California's minimum standards for a lawyer referral service in California. See Business & Professions Code, section 6155, and rules and regulations pursuant thereto. See *also* Rule [5.4(a)(4)].

[7] A lawyer who accepts assignments or referrals 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 Rules 5.3 and [5.4] Legal service plans and lawyer referral services may communicate with prospective clients, 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 prospective clients 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.

[8] Paragraph (b)(4) permits a lawyer to make referrals to another, in return for the undertaking of that person to refer clients or customers to the lawyer. Such reciprocal referral arrangements must not interfere with the lawyer's professional judgment as to making referrals or as to providing substantive legal services. See Rule [5.4 (c)]. A lawyer does not violate paragraph (b)(4) of this Rule by agreeing to refer clients or customers to another, so long as the reciprocal referral agreement is not exclusive and the client is informed of the referral agreement. See *also* Rule 1.5.1(b). Conflicts of interest created by arrangements made pursuant to paragraph (b)(4) are governed by Rule [re: conflicts of interest]. Reciprocal referral agreements should not be of indefinite duration and should be reviewed periodically to determine whether they comply with these Rules. This Rule is not intended to restrict referrals or divisions of revenues or net income among lawyers within a law firm comprised of multiple entities. Divisions of fees between or among lawyers not in the same law firm is governed by Rule 1.5.1.

*Required information in advertisements*

[9] Paragraph (c) also applies to a group of lawyers that engages in cooperative advertising. Any such communication made pursuant to this Rule shall include the name and office address of at least one member of the group responsible for its content. See *also* Business & Professions Code, section 6155, subdivision (h). See *also* Business & Professions Code, section 6159.1, concerning the requirement to retain any advertisement for one year.

### **Rule 7.3: Direct Contact with Prospective Clients**

(a) A lawyer shall not by in person, telephone or real-time electronic contact solicit professional employment from a prospective client when a significant motive for doing so is the lawyer's pecuniary gain, unless the communication is protected from abridgment by the Constitution of the United States or by the Constitution of the State of California or the person contacted:

(1) is a lawyer; or

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

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

(1) the prospective client has made known to the lawyer a desire not to be solicited by the lawyer; or

(2) the solicitation is transmitted in any manner which involves intrusion, coercion, duress, compulsion, intimidation, threats, or vexatious or harassing conduct; or

(3) the person to whom the solicitation is directed is known to the lawyer to be represented by counsel in a matter which is a subject of the communication.

(c) Every written, recorded or electronic communication from a lawyer soliciting professional employment from a prospective client known to be in need of legal services in a particular matter shall include the words "Advertising Material" or words of similar import on the outside envelope, if any, and at the beginning and ending of any recorded or electronic communication, unless the recipient of the communication is a person specified in paragraphs (a)(1) or (a)(2), or unless it is apparent from the context that the communication is an advertisement.

(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 telephone contact 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] There is a potential for abuse inherent in direct in person, telephone or real-time electronic contact by a lawyer with a prospective client known to need legal services. These forms of contact between a lawyer and a prospective client subject the layperson to the private importuning of the trained advocate in a direct interpersonal encounter. The prospective client, 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.

[2] This potential for abuse inherent in direct in person, telephone or real-time electronic solicitation of prospective clients justifies its prohibition, particularly since lawyer advertising and written communication permitted under Rule 7.2 offer alternative means of conveying necessary information to those who may be in need of legal services.

[3] The use of general advertising and written or electronic communications to transmit information from a lawyer to prospective clients, rather than direct in person, telephone or real-time electronic contact, will help to assure 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.

[4] There is far less likelihood that abuse will occur when the person contacted is a lawyer, a former client, or one with whom the lawyer has a prior close personal or family relationship, or in situations in which the lawyer is not motivated by pecuniary gain. Consequently, the general prohibition in paragraph (a) and the requirements of paragraph (c) are not applicable in those situations.

[5] Even permitted forms of solicitation can be abused. Thus, any solicitation which (i) contains information which is false or misleading within the meaning of Rule 7.1, (ii) is transmitted in any manner which involves intrusion, coercion, duress, compulsion, intimidation, threats, or vexatious or harassing conduct within the meaning of paragraph (b)(2), (iii) involves contact with a prospective client who has made known to the lawyer a desire not to be solicited by the lawyer within the meaning of paragraph (b)(1), or (iv) is directed to a person whom the lawyer knows is represented by counsel in a matter which is a subject of the communication within the meaning of paragraph (b)(3) is prohibited.

[6] This Rule is not intended to prohibit a lawyer from contacting representatives of organizations or groups that may be interested in establishing a *bona fide* group or prepaid legal plan for their members, insureds, beneficiaries or other third parties for the purpose of informing such entities of the availability of and details concerning the plan or arrangement which the lawyer or lawyer's firm is willing to offer.

[7] The requirement in paragraph (c) that certain communications be marked

“Advertising Material” or with words of similar import does not apply to communications sent in response to requests of potential clients or their representatives. Paragraph (c) is also not intended to apply to general announcements by lawyers, including but not limited to changes in personnel or office location, nor does it apply where it is apparent from the context that the communication is an advertisement.

[8] Paragraph (d) of this Rule permits a lawyer to participate with an organization which 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 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 also Rules [5.4] and 8.4(a).

**Rule 7.4: Communication of Fields of Practice and Specialization**

(a) A lawyer may communicate the fact that the lawyer does or does not practice in particular fields of law. A lawyer may also communicate that his or her practice is limited to or concentrated in a particular field of law, if such communication does not imply an unwarranted expertise in the field so as to be false or misleading under Rule 7.1.

(b) A lawyer registered to practice patent law 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 a substantially similar designation.

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

(1) the lawyer holds a current certificate as a specialist issued by the Board of Legal Specialization, or any other entity accredited by the State Bar to designate specialists pursuant to standards adopted by the Board of Governors; and

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