

(a) if participating in the decision or action would be incompatible with the lawyer's obligations to a client under Rule 1.7; or

(b) where the decision or action could have a material adverse effect on the representation of a client of the organization whose interests are adverse to a client of the lawyer.

**There is no disciplinary penalty for a violation of this Rule.**

#### Comment

[1] Lawyers should be encouraged to support and participate in legal service organizations. A lawyer who is an officer or a member of such an organization does not thereby have a client-lawyer relationship with persons served by the organization. However, there is potential conflict between the interests of such persons and the interests of the lawyer's clients. If the possibility of such conflict disqualified a lawyer from serving on the board of a legal services organization, the profession's involvement in such organizations would be severely curtailed.

[2] It may be necessary in appropriate cases to reassure a client of the organization that the representation will not be affected by conflicting loyalties of a member of the board. Established, written policies in this respect can enhance the credibility of such assurances.

#### **RULE 6.4** **LAW REFORM ACTIVITIES AFFECTING CLIENT INTERESTS**

**A lawyer may serve as a director, officer or member of an organization involved in reform of the law or its administration notwithstanding that the reform may affect the interests of a client of the lawyer. When the lawyer knows that the interests of a client may be materially benefited by a decision in which the lawyer participates, the lawyer shall disclose that fact but need not identify the client.**

**There is no disciplinary penalty for a violation of this Rule.**

#### Comment

[1] Lawyers involved in organizations seeking law reform generally do not have a client-lawyer relationship with the organization. See also *Rule 1.2(b): Scope of Representation*. Without this Rule, it might follow that a lawyer could not be involved in a bar association law reform program that might indirectly affect a client. For example, a lawyer specializing in antitrust litigation might be regarded as disqualified from participating in drafting revisions of rules governing that subject. In determining the nature and scope of participation in such activities, a lawyer should be mindful of obligations to clients under other Rules, particularly *Rule 1.7: Conflict of Interest*. A lawyer is professionally obligated to protect the integrity of the program by making an appropriate disclosure within the organization when the lawyer knows a private client might be materially benefited.

### **PART SEVEN** **INFORMATION ABOUT LEGAL SERVICES**

#### **RULE 7.1** **COMMUNICATIONS CONCERNING A LAWYER'S SERVICES**

(a) A lawyer may advertise through all forms of public media and through written communication not involving personal contact so long as the communication is not false, fraudulent, deceptive or misleading. By way of illustration, but not limitation, a communication is false, fraudulent, deceptive or misleading if it:

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

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

(3) compares the lawyer's services with other lawyers' services unless the comparison can be factually substantiated;

(4) fails to include the name of at least one lawyer responsible for its content; or

(5) contains any information regarding contingent fees, and fails to conspicuously present the following disclaimer: "Contingent attorneys' fees refers only to those fees charged by attorneys for their legal services. Such fees are not permitted in all types of cases. Court costs and other additional expenses of legal action usually must be paid by the client."

(6) contains the language 'no fee unless you win or collect' or any similar phrase and fails to conspicuously present the following disclaimer:

"No fee unless you win or collect" [or insert the similar language used in the communication] refers only to fees charged by the attorney. Court costs and other additional expenses of legal action usually must be paid by the client. Contingent fees are not permitted in all types of cases.

(b) A public communication for which a lawyer has given value must be identified as such unless it is apparent from the context that it is such a communication.

(c) A lawyer retains ultimate responsibility to ensure that all communications concerning the lawyer or the lawyer's services comply with the Georgia Rules of Professional Conduct.

**The maximum penalty for a violation of this Rule is disbarment.**

#### Comment

[1] This rule governs the content of all communications about a lawyer's services, including the various types of advertising permitted by Rules 7.3 through 7.5. Whatever means are used to make known a lawyer's services, statements about them should be truthful.

[2] The prohibition in sub-paragraph (a)(2) of this *Rule 7.1: Communications Concerning a Lawyer's Services* of statements that may create "unjustified expectations" would ordinarily preclude advertisements about results obtained on behalf of a client, such as the amount of a damage award or the lawyer's record in obtaining favorable verdicts, and advertisements containing client endorsements. Such information may create the unjustified expectation that similar results can be obtained for others without reference to the specific factual and legal circumstances.

#### *Affirmative Disclosure*

[3] In general, the intrusion on the First Amendment right of commercial speech resulting from rationally-based affirmative disclosure requirements is minimal, and is therefore a preferable form of regulation to absolute bans or other similar restrictions. For example, there is no significant interest in failing to include the name of at least one accountable attorney in all communications promoting the services of a lawyer or law firm as required by sub-paragraph (a)(5) of *Rule 7.1: Communications Concerning a Lawyer's Services*. Nor is there any substantial burden imposed as a result of the affirmative disclaimer requirement of sub-paragraph (a)(6) upon a lawyer who wishes to make a claim in the nature of "no fee unless you win." Indeed, the United States Supreme Court has specifically recognized that affirmative disclosure of a client's liability for costs and expenses of litigation may be required to prevent consumer confusion over the technical distinction between the meaning and effect of the use of such terms as "fees" and "costs" in an advertisement.

[4] Certain promotional communications of a lawyer may, as a result of content or circumstance, tend to mislead a consumer to mistakenly believe that the communication is something other than a form of promotional communication for which the lawyer has paid. Examples of such a communication might include advertisements for seminars on legal topics directed to the lay public when such seminars are sponsored by the lawyer, or a newsletter or newspaper column which appears to inform or to educate about the law. Paragraph (b) of this *Rule 7.1: Communications Concerning a Lawyer's Services* would require affirmative disclosure that a lawyer has given value in order to generate these types of public communications if such is in fact the case.

#### *Accountability*

[5] Paragraph (c) makes explicit an advertising attorney's ultimate responsibility for all the lawyer's promotional communications and would suggest that review by the lawyer prior to dissemination is advisable if any doubts exist concerning conformity of the end product with these Rules. Although prior review by disciplinary authorities is not required by these Rules, lawyers are certainly encouraged to contact disciplinary authorities prior to authorizing a promotional communication if there are any doubts concerning either an interpretation of these Rules or their application to the communication.

#### **RULE 7.2** **ADVERTISING**

(a) Subject to the requirements of Rules 7.1 and 7.3, a lawyer may advertise services through:

(1) public media, such as a telephone directory, legal directory, newspaper or other periodical;

(2) outdoor advertising;

(3) radio or television;

(4) written, electronic or recorded communication.

(b) A copy or recording of an advertisement or communication shall be kept for two years after its last dissemination along with a record of when and where it was used.

**The maximum penalty for a violation of this Rule is a public reprimand.**

#### Comment

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

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

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

[4] Neither this Rule nor *Rule 7.3: Direct Contact with Prospective Clients* prohibits communications authorized by law, such as notice to members of a class in class action litigation.

#### *Record of Advertising*

[5] Paragraph (b) requires that a record of the content and use of advertising be kept in order to facilitate enforcement of this Rule.

#### **RULE 7.3                      DIRECT CONTACT WITH PROSPECTIVE CLIENTS**

(a) A lawyer shall not send, or knowingly permit to be sent, on behalf of the lawyer, the lawyer's firm, lawyer's partner, associate, or any other lawyer affiliated with the lawyer or the lawyer's firm, a written communication to a prospective client for the purpose of obtaining professional employment if:

(1) it has been made known to the lawyer that a person does not desire to receive communications from the lawyer;

(2) the communication involves coercion, duress, fraud, overreaching, harassment, intimidation or undue influence;

(3) the written communication concerns an action for personal injury or wrongful death or otherwise relates to an accident or disaster involving the person to whom the communication is addressed or a relative of that person, unless the accident or disaster occurred more than 30 days prior to the mailing of the communication; or

(4) the lawyer knows or reasonably should know that the physical, emotional or mental state of the person is such that the person could not exercise reasonable judgment in employing a lawyer.

(b) Written communications to a prospective client, other than a close friend, relative, former client or one whom the lawyer reasonably believes is a former client, for the purpose of obtaining professional employment shall be plainly marked "Advertisement" on the face of the envelope and on the top of each page of the written communication in type size no smaller than the largest type size used in the body of the letter.

(c) A lawyer shall not compensate or give anything of value to a person or organization to recommend or secure the lawyer's employment by a client, or as a reward for having made a recommendation resulting in the lawyer's employment by a client; except that the lawyer may pay for public communications permitted by Rule 7.1 and except as follows:

(1) A lawyer may pay the usual and reasonable fees or dues charged by a bona fide lawyer referral service operat-

ed by an organization authorized by law and qualified to do business in this state; provided, however, such organization has filed with the State Disciplinary Board, at least annually, a report showing its terms, its subscription charges, agreements with counsel, the number of lawyers participating, and the names and addresses of lawyers participating in the service;

(2) A lawyer may pay the usual and reasonable fees or dues charged by a bar-operated non-profit lawyer referral service, including a fee which is calculated as a percentage of the legal fees earned by the lawyer to whom the service has referred a matter, provided such bar-operated non-profit lawyer referral service meets the following criteria:

(i) the lawyer referral service shall be operated in the public interest for the purpose of referring prospective clients to lawyers, pro bono and public service legal programs, and government, consumer or other agencies who can provide the assistance the clients need. Such organization shall file annually with the State Disciplinary Board a report showing its rules and regulations, its subscription charges, agreements with counsel, the number of lawyers participating and the names and addresses of the lawyers participating in the service;

(ii) the sponsoring bar association for the lawyer referral service must be open to all lawyers licensed and eligible to practice in this state who maintain an office within the geographical area served, and who meet reasonable objectively determinable experience requirements established by the bar association;

(iii) The combined fees charged by a lawyer and the lawyer referral service to a client referred by such service shall not exceed the total charges which the client would have paid had no service been involved; and,

(iv) A lawyer who is a member of the qualified lawyer referral service must maintain in force a policy of errors and omissions insurance in an amount no less than \$100,000 per occurrence and \$300,000 in the aggregate.

(3) A lawyer may pay the usual and reasonable fees to a qualified legal services plan or insurer providing legal services insurance as authorized by law to promote the use of the lawyer's services, the lawyer's partner or associates services so long as the communications of the organization are not false, fraudulent, deceptive or misleading;

(4) A lawyer may pay the usual and reasonable fees charged by a lay public relations or marketing organization provided the activities of such organization on behalf of the lawyer are otherwise in accordance with these Rules.

(5) A lawyer may pay for a law practice in accordance with *Rule 1.17: Sale of Law Practice*.

(d) A lawyer shall not solicit professional employment as a private practitioner for the lawyer, a partner or associate through direct personal contact or through live telephone contact, with a non-lawyer who has not sought advice regarding employment of a lawyer.

(e) A lawyer shall not accept employment when the lawyer knows or it is obvious that the person who seeks to employ the lawyer does so as a result of conduct by any person or organization prohibited under Rules 7.3(c)(1), 7.3(c)(2) or 7.3(d): *Direct Contact with Prospective Clients*.

**The maximum penalty for a violation of this Rule is disbarment.**

#### Comment

##### *Direct Personal Contact*

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

[2] The situation is therefore fraught with the possibility of undue influence, intimidation, and overreaching. The potential for abuse inherent in solicitation of prospective clients through personal contact justifies its prohibition, particularly since the direct written contact permitted under paragraph (b) of this Rule offers an alternative means of communicating necessary information to those who may be in need of legal services. Also

included in the prohibited types of personal contact are direct personal contact through an intermediary and live contact by telephone.

#### Direct Mail Solicitation

[3] Subject to the requirements of *Rule 7.1: Communications Concerning a Lawyer's Services* and paragraphs (b) and (c) of this *Rule 7.3: Direct Contact with Prospective Clients*, promotional communication by a lawyer through direct written contact is generally permissible. The public's need to receive information concerning their legal rights and the availability of legal services has been consistently recognized as a basis for permitting direct written communication since this type of communication may often be the best and most effective means of informing. So long as this stream of information flows cleanly, it will be permitted to flow freely.

[4] Certain narrowly-drawn restrictions on this type of communication are justified by a substantial state interest in facilitating the public's intelligent selection of counsel, including the restrictions of sub-paragraph (a)(3) & (4) which proscribe direct mailings to persons such as an injured and hospitalized accident victim or the bereaved family of a deceased.

[5] In order to make it clear that the communication is commercial in nature, paragraph (b) requires inclusion of an appropriate affirmative "advertisement" disclaimer. Again, the traditional exception for contact with close friends, relatives and former clients is recognized and permits elimination of the disclaimer in direct written contact with these persons.

[6] This Rule does not prohibit communications authorized by law, such as notice to members of a class in class action litigation.

#### Paying Others to Recommend a Lawyer

[7] A lawyer is allowed to pay for communications permitted by these Rules, but otherwise is not permitted to pay another person for channeling professional work. This restriction does not prevent an organization or person other than the lawyer from advertising or recommending the lawyer's services. Thus, a legal aid agency, a prepaid legal services plan or prepaid legal insurance organization may pay to advertise legal services provided under its auspices. Likewise, a lawyer may participate in lawyer referral programs and pay the usual fees charged by such programs, provided the programs are in compliance with the registration requirements of sub-paragraph (c)(1) or (c) (2) of this *Rule 7.3: Direct Contact with Prospective Clients* and the communications and practices of the organization are not deceptive or misleading.

[8] A lawyer may not indirectly engage in promotional activities through a lay public relations or marketing firm if such activities would be prohibited by these Rules if engaged in directly by the lawyer.

#### **RULE 7.4 COMMUNICATION OF FIELDS OF PRACTICE**

A lawyer may communicate the fact that the lawyer does or does not practice in particular fields of law. A lawyer who is a specialist in a particular field of law by experience, specialized training or education, or is certified by a recognized and bona fide professional entity, may communicate such specialty or certification so long as the statement is not false or misleading.

**The maximum penalty for a violation of this Rule is a public reprimand.**

#### Comment

[1] 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 such fields, the lawyer is permitted to so indicate.

[2] A lawyer may truthfully communicate the fact that the lawyer is a specialist or is certified in a particular field of law by experience or as a result of having been certified as a "specialist" by successfully completing a particular program of legal specialization. An example of a proper use of the term would be "Certified as a Civil Trial Specialist by XYZ Institute" provided such was in fact the case, such statement would not be false or misleading and provided further that the Civil Trial Specialist program of XYZ Institute is a recognized and bona fide professional entity.

#### **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.**

**(b) A law firm with offices in more than one jurisdiction may use the same name 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.**

**(c) The name of a lawyer holding 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.**

**(e) A trade name may be used by a lawyer in private practice if:**

**(1) the trade name includes the name of at least one of the lawyers practicing under said name. A law firm name consisting solely of the name or names of deceased or retired members of the firm does not have to include the name of an active member of the firm; and**

**(2) the trade name does not imply a connection with a government entity, with a public or charitable legal services organization or any other organization, association or institution or entity, unless there is, in fact, a connection.**

**The maximum penalty for a violation of this Rule is a public reprimand.**

#### Comment

[1] Firm names and letterheads are subject to the general requirement of all advertising that the communication must not be false, fraudulent, deceptive or misleading. Therefore, lawyers sharing office facilities, but who are not in fact partners, may not denominate themselves as, for example, "Smith and Jones," for that title suggests partnership in the practice of law. Nor may a firm engage in practice in Georgia under more than one name. For example, a firm practicing as A, B and C may not set up a separate office called "ABC Legal Clinic."

[2] Trade names may be used so long as the name includes the name of at least one or more of the lawyers actively practicing with the firm. Firm names consisting entirely of the names of deceased or retired partners have traditionally been permitted and have proven a useful means of identification. Sub-paragraph (e)(1) permits their continued use as an exception to the requirement that a firm name include the name of at least one active member.

### **PART EIGHT MAINTAINING THE INTEGRITY OF THE PROFESSION**

#### **RULE 8.1 BAR ADMISSION AND DISCIPLINARY MATTERS**

**An applicant for admission to the bar, or a lawyer in connection with a bar admission application or in connection with a disciplinary matter, shall not:**

**(a) knowingly make a false statement of material fact; or**

**(b) fail to disclose a fact necessary to correct a misapprehension known by the person to have arisen in the matter, or knowingly fail to respond to a lawful demand for information from an admissions or disciplinary authority, except that this rule does not require disclosure of information otherwise protected by Rule 1.6.**

**The maximum penalty for a violation of this Rule is disbarment.**

#### Comment

[1] The duty imposed by this Rule extends to persons seeking admission to the bar as well as to lawyers. Hence, if a person makes a material false statement in connection with an application for admission, it may be the basis for subsequent disciplinary action if the person is admitted, and in any event may be relevant in a subsequent admission application. The duty imposed by this Rule applies to a lawyer's own admission or discipline as well as that of others. Thus, it is a separate professional offense for a lawyer to knowingly make a misrepresentation or omission in connection with a disciplinary investigation of the lawyer's own conduct. This Rule also requires affirmative clarification of any misunderstanding on the part of the admissions or disciplinary authority of which the person involved becomes aware.

[2] This Rule is subject to the provisions of the Fifth Amendment of the United States Constitution and corresponding provisions of state constitutions. A person relying on such a provision in response to a question, however, should do so openly and not use the right of nondisclosure as a justification for failure to comply with this Rule.