

Oregon State Bar

Report of the Advertising Task Force

Presented to the OSB Board of Governors

August 28, 2009

I. Introduction and Summary

When Oregon replaced the *former* Oregon Code of Professional Conduct (the DRs) with the Oregon Rules of Professional Conduct (the RPCs), effective January 1, 2005, the Oregon State Bar House of Delegates proposed and the Oregon Supreme Court required no changes to Oregon's disciplinary advertising and solicitation rules.¹ Consequently, former DR 2-101 through 2-105 were renumbered RPC 7.1 through 7.5 but the substance of these rules remained unchanged.²

In the course of its review of the draft RPCs, Oregon Supreme Court noted concerns about whether former DR 2-104(A)(1)/then-proposed new RPC 7.3(a) infringed on the free speech guarantees contained in the First Amendment to the United States Constitution or Article I, Section 8 of the Oregon Constitution.³ Later, in response a successful challenge to several of New York's lawyer advertising rules,⁴ the Oregon Supreme Court requested that the Bar appoint a Task Force to review the Oregon RPCs, not only with respect to federal and state constitutionality but also with respect to whether the rules strike a wise balance in terms of the public policies sought to be served.

This Report is the work product of the nine-member Advertising Task Force appointed by the Oregon State Bar Board of Governors in response to the Oregon Supreme Court's suggestions (the "Task Force").⁵ As is explained further below, eight of the nine Task Force members (the "Majority") have concluded that the present Oregon RPCs do not strike a proper balance, either in terms of state constitutional law or in terms of public policy. We therefore propose that present Oregon RPC 7.1 through 7.5 (the "Current Rules") be replaced by the revised proposed rules attached hereto as Exhibit B (the "Proposed Rules").

The Proposed Rules are different from the Current Rules in a number of respects. For example:

The Majority believes that the principal purpose to be served by limitations on lawyer advertising and solicitation is an assurance that lawyer advertising and solicitation be truthful and not misleading. By contrast, attempts to protect some groups of lawyers against potential competition, attempts to regulate what appears to be in good taste or

¹ Amendments to the Oregon RPCs require formal approval by both the Oregon State Bar House of Delegates and the Oregon Supreme Court.

² Exhibit A hereto is a copy of current Oregon RPC 7.1 through 7.5.

³ Article I, Section 8 of the Oregon Constitution provides that "No law shall be passed restraining the free expression of opinion, or restricting the right to speak, write, or print freely on any subject whatever; but every person shall be responsible for the abuse of this right."

⁴ See *Alexander v. Cahill*, 2007 WL 2120024 (NDNY 2007), appeal pending.

⁵ The Task Force members are Peter Jarvis (Chair), Mark Cogan, Hon. Robert Durham, Guy Greco, Steve Johansen, Gregory Lusby, Velda Rogers, Lawrence Wobbrock and Pamela Yee. Oregon State Bar General Counsel Sylvia Stevens acted as Bar staff liaison.

attempts to keep members of the public ignorant of their potential rights are not proper purposes for such limitations.

The Majority also believes, however, that the present prohibitions involving duress or harassment and prohibitions against further contacts of individuals who have made known a desire not to be contacted are appropriate and should be continued.

The Proposed Rules focus much more clearly on the need for lawyer advertising and solicitation to be truthful and not misleading. Thus, the “laundry list” of specific prohibitions contained in Current RPC 7.1(a) has been eliminated due to an overlapping series of concerns about whether the list as written supported this objective or was even helpful to attorneys. The Majority believes that this list should be replaced by an extended Bar-sponsored commentary which will, among other things, allow a more nuanced assessment of advertising and solicitation issues than is possible within the limits of black-letter RPCs.

The Majority believes that Article I, Section 8 of the Oregon Constitution prevents the blanket prohibition against in-person or real-time electronic solicitation of clients by lawyers or their agents or employees that is presently contained in RPC 7.3. The Majority also believes that this blanket unduly restricts much behavior that is entirely appropriate and in the public interest.

The Majority considered whether the blanket prohibition on in-person or real-time electronic solicitation of clients should be wholly abandoned or, perhaps, retained solely as to personal injury, wrongful death and consumer matters, as distinct from business matters. Although the Majority concluded that the blanket prohibition should be repealed as to both personal and business matters, we note this potential distinction could appeal to some members of the Bar.

The Majority believes that a 30-day waiting period on in-person or real-time electronic solicitations, which is not a part of the Current Rules, would not be considered a reasonable time, place and manner limitation within the meaning of Article I, Section 8.

The Majority should not be understood to say that its Proposed Rules must be accepted or rejected on an “all or nothing” basis. For example, and by way of illustration only, changes could conceivably be made to include limitations on the days or hours at which in-person or real-time electronic solicitation of clients. Similarly, changes could conceivably be made to limit the extent to which non-lawyers may engage in in-person or real-time electronic solicitation on behalf of lawyers.

It will not do for Bar members to stand still or to rage against the tide as the world around us evolves. We therefore look forward to the opportunity to discuss this Report with the Board of Governors and with the larger Bar membership.

II. Constitutional Protection of Free Speech

The Task Force spent a great deal of time studying constitutional protections of and limitations on attorney speech. What we provide in this section is not an extensively detailed presentation but rather an overview of the reasons why the Majority (eight of nine of the Task Force members) believes that significant changes are necessary.

A. Federal Constitutional Free Speech Protections⁶

The day is long since past when anyone can credibly assert that lawyer advertising or solicitations by mail or email can all be prohibited. “Commercial speech” that is truthful and not misleading is unquestionably protected by the First Amendment to the United States Constitution. *See e.g., Zauderer v. Office of Disciplinary Counsel of Supreme Court*, 417 US 626 (1985)(state may not prohibit non-deceptive illustrations in advertising); *Shapero v. Kentucky Bar Ass’n*, 486 US 466 (1988)(state may not prohibit non-deceptive direct mailing). As a matter of federal First Amendment case law, the only permissible restrictions on advertising or solicitation that is truthful and not misleading are reasonable restrictions on the time, place and manner or means by which advertising and solicitation may occur. *See generally*, Maureen Callahan VanderMay, “Marketing, Advertising and Solicitation,” THE ETHICAL OREGON LAWYER §§ 2.1 *et. seq.* (Oregon CLE 2006).

Under the First Amendment, a state may regulate lawyer advertising if that regulation satisfies the three-part test for regulation of commercial speech generally. *Florida Bar v. Went For It, Inc.*, 515 US 618 (1995), citing *Central Hudson Gas & Electric v. Public Serv. Comm. Of New York*, 447 US 557 (1980). The test requires first, that the state assert a substantial interest in support of its regulation; second, that the restriction on speech “directly and materially advances that interest”: and third, that the regulation be “narrowly drawn.” *Central Hudson*, 447 US at 624. In *Went For It*, the court applied the *Central Hudson* test in upholding a state regulation that created a 30-day “blackout period” on direct mail solicitation following an accident or disaster. *Went For It*, 515 US at 625-32. The court found the state had an interest in protecting victims and their loved ones against unwanted solicitation by lawyers when the lawyers had no prior professional or close personal relationship with the lawyers and when a significant motive for the lawyers’ contact with the client was personal gain for the lawyers. The court further found that the Florida’s extensive study of lawyer advertising demonstrated that the regulation advanced the state interest and that the 30-day blackout was reasonably narrowly drawn. *Id.* at 632-34.

By contrast, the court struck down as unreasonable a limitation that prohibited certified public accountants from making cold calls in business matters. *Edenfield v. Fane*, 507 US 761 (1993). In addition, several lower court have held that when a particular set of

⁶ Although, as a jurisprudential matter, we would ordinarily consider state constitutional provisions before turning to their federal counterparts, we believe that for purposes of this report, it makes sense first to discuss the narrower federal protections on speech before turning to the broader state protections.

legal circumstances requires that a potential client take action in less than 30 days (*e.g.*, with respect to criminal and traffic law defendants who may well need particularly prompt assistance), a 30-day blackout cannot be imposed. *See, e.g., Ficker v. Curran*, 119 F3d 1150 (4th Cir 1997).

There are still unanswered questions concerning the scope of federal free speech protection. Some of these questions stem from the fact that under the First Amendment, commercial speech is entitled to less protection than political speech. *See, e.g., Central Hudson, supra*. For example, one can readily assert that under *Edenfield v. Fane*, a prohibition on in-person or real-time electronic client solicitation in business matters would not pass muster—at least absent the kind of study that the Florida Bar submitted on behalf of its 30-day waiting period. The Majority found it unnecessary to reach a conclusion on this issue as a matter of federal First Amendment law because, in our view, the state constitutional protection of lawyer speech is clearly greater than the First Amendment protection.

B. State Constitutional Free Speech Protections

Article I, Section 8 of the Oregon Constitution, which has been a part of the state constitution since 1859, provides that:

No law shall be passed restraining the free expression of opinion, or restricting the right to speak, write, or print freely on any subject whatever; but every person shall be responsible for the abuse of this right.

A long line of Oregon cases has held that the state constitution provides greater protection to speech than the federal First Amendment. The Oregon Supreme Court has held, for example, that the state constitution protects commercial speech to the same degree that it protects political speech. *See, e.g., Moser v. Frohnmayer*, 315 Or 372, 376, 845 P2d 1284 (1993). If, in other words, the state cannot prevent certain kinds of speech by political actors (*e.g.*, all types and forms of door-to-door or telephone canvassing), it cannot prevent the same kinds of speech by commercial actors, including but not limited to lawyers.

The Oregon Supreme Court applies its own three step approach to free speech analysis under Article I, Section 8.

First, the Oregon Supreme Court distinguishes between laws that focus on restricting the *content* of speech and laws that focus on restricting *results or effects* of speech. *See, e.g., State v. Plowman*, 314 Or 157, 163, 838 P2d 558 (1992) (summarizing *State v. Robertson*, 293 Or 402, 649 P2d 569 (1982)). Laws that focus on the *content* of speech violate Article I Section 8 unless they fall within a well-established historical exception. Thus, a content-based restriction is prohibited unless: “the scope of the restraint is wholly confined within some historical exception that was well established when the first American guarantees of freedom of expression were adopted and that the guarantees then or in 1859 demonstrably were not intended to reach. Examples are perjury, solicitation or verbal assistance in crime, some forms of theft, forgery, and fraud, and their contemporary variants.” *Robertson, supra*, 293 Or. at 412. For example, the state was

unable to establish that 19th century prohibitions on public nudity were sufficient to establish an historical exception for the regulation of live sex shows. *State v. Ciancanelli*, 339 Or 282, 321-22, 121 P3d 613, 634-35 (2005); *see also*, *Zackheim v. Forbes*, 134 Or App 548, 550 (1995) (historical prohibition on access to public records insufficient to establish historical exception for limiting the use of public records). The requirement for a historical exception to justify an express limitation on the content of speech is particularly significant as to lawyer advertising and solicitation for one simple reason. In and before 1859, and indeed for some time thereafter, advertising and solicitation by Oregon lawyers and non-Oregon lawyers was not prohibited. For the most part, those limitations did not take hold until the early 20th Century.

Second, when a law focuses on forbidden results but expressly prohibits forms of speech used to achieve those results, the court will analyze the law for potential overbreadth. *See e.g. State v. Moyle*, 299 Or 691, 705 P2d 740 (1985) (harassment statute upheld where statute required unambiguous and genuine threat to person or property that causes actual alarm); *State v. Garcias*, 296 Or 688, 679 P2d 1254 (1984) (menacing statute upheld). This limitation is significant as to lawyer advertising and solicitation because the present blanket prohibition against in-person or real-time electronic solicitation prohibits not only communications that may be untruthful or misleading or that may involve duress or harassment but also many other communications that would not involve any such concerns. We also are aware of no empirical justification for the view that lawyers who engage in some or all forms of advertising or solicitation will necessarily be less honest, less competent or less diligent than their non-advertising and non-soliciting colleagues.

Third, reasonable restrictions—as distinct from outright prohibitions, on the time, place or manner of speech—may be upheld. *See, e.g., Outdoor Media Dimensions, Inc. v. Dept. Of Transportation*, 340 Or 275, 288-89, 132 P2d 5, 12 (2006) (content-neutral permit and fee requirements for highway signs permissible under this category); *City of Hillsboro v. Purcell*, 306 Or 547, 761 P2d 510 (1988) (ordinance banning all door-to-door solicitation unconstitutionally overbroad, though reasonable limitations would be permitted). In other words, laws that restrict speech, but do not prohibit it entirely, may be constitutional if sufficiently narrowly tailored to meet specific, clearly expressed and permissible objectives. In *In re Lasswell*, 296 Or 121, 673 P2d 855 (1983), for example, the court upheld the constitutionality of Oregon’s former rule limiting pretrial publicity as applied to lawyers involved in a case, but only as long as a “serious and imminent threat” to a fair trial could be shown. At the same time, the court noted that it would be impermissible to restrict the expression of lawyers merely because they were lawyers. *Id.* at 125. By definition, a wholesale ban on in-person or real-time electronic solicitation is not a reasonable restriction on time, place or manner. For much the same reason, the Majority also believes that a 30-day waiting period on in-person or real-time electronic solicitations would not be a reasonable time, place and manner limitation within the meaning of Article I, Section 8. If nothing else, there are times when a potential client may choose to or have to act in less than 30 days and in which a delay of notification could prove harmful.

C. From the General to the Specific

In addition to reviewing the larger question of the present blanket prohibition on in-person and real-time electronic solicitation, the Task Force also went line-by-line through the Current Rules. As we did so, we became concerned that the “laundry list” of prohibitions contained in current Oregon RPC 7.1(a) contained many items that were either overbroad (in that they prohibited speech that did not have any of the proscribed effects) or ambiguous (in that they did not, in our view, give sufficiently clear or nuanced guidance as to what is or is not allowed).

We therefore considered revising the list on a subsection by subsection basis but ultimately concluded that it would be extremely difficult, in the context of black-letter rules, to rewrite those prohibitions that we believed were worth keeping in a succinct and sufficiently helpful manner. The Majority therefore proposes instead the preparation of a set of comments that will address the issues raised in current RPC 7.1(a) and additional issues in a way that will provide guidance to practicing lawyers and to the Bar in its disciplinary capacity. Although the Oregon Supreme Court has, in the past, expressed little interest in adopting either the Official Comments to the ABA Model Rules or a set of such comments modified to fit Oregon’s disciplinary experience, we would not expect the court to object to the publication of these kinds of comments any more than it objects to the publication of other CLE materials.

The reader will note that the Proposed Rules also contain a number of other changes. For example, the simplification of the prohibitions on lawyer advertising and solicitation make it possible to simplify the regulation of firm names and to eliminate the presently existing special set of exemptions that applied to prepaid legal services plans.

III. Additional Information and Considerations

In summary, the Majority concluded that state, if not also federal, free speech considerations required a substantial revision of the Current Rules. The Majority also concluded, however, that this sort of revision makes public policy sense. Of course, the promotion of free speech is itself a considerable public policy goal that should not lightly be overridden. This is not, however, our only public policy consideration. For example:

We believe that much public good can be and is accomplished by lawyer-initiated communications with potential or prospective clients. Restrictions on such communications therefore be no broader than they need to be.

We believe that most Oregonians, if not also most non-Oregonians with whom Oregon lawyers are likely to come into contact, can do a perfectly good job most of the time to protect themselves against dishonest or abusive solicitation efforts..

We observed that very few bar complaints alleging more than technical violations have been filed against Oregon lawyers in recent years.

The changes that we have proposed with respect to in-person and real-time electronic solicitation are not unprecedented. The District of Columbia abandoned most ethics rule based prohibitions on in-person or real-time solicitation in 1997. More recently, the State of Maine has adopted a version of ABA Model Rule 7.3 that permits in-person solicitation of commercial clients.

The Current Rules already contain exceptions for solicitation of current clients (whether the subject of the solicitation is related or unrelated to the work being done), former clients (again whether the subject of the solicitation is related or unrelated to prior work) or solicitation of attorneys (including but not limited to in-house counsel for business entities). The fact that these means of solicitation appear not to create any undue difficulties is consistent with the Majority's view that there is nothing inherently wrongful or inappropriate with in-person or real time electronic solicitation.

IV. Concluding Remarks

The Majority therefore recommends adoption of the Proposed Rules in the form attached hereto as Exhibit B.

Exhibit A

Current Oregon Rules of Professional Conduct

INFORMATION ABOUT LEGAL SERVICES

RULE 7.1 COMMUNICATION CONCERNING A LAWYER'S SERVICES

(a) A lawyer shall not make or cause to be made any communication about the lawyer or the lawyer's firm, whether in person, in writing, electronically, by telephone or otherwise, if the communication:

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

(2) is intended or is reasonably likely to create a false or misleading expectation about results the lawyer or the lawyer's firm can achieve;

(3) except upon request of a client or potential client, compares the quality of the lawyer's or the lawyer's firm's services with the quality of the services of other lawyers or law firms;

(4) states or implies that the lawyer or the lawyer's firm specializes in, concentrates a practice in, limits a practice to, is experienced in, is presently handling or is qualified to handle matters or areas of law if the statement or implication is false or misleading;

(5) states or implies that the lawyer or the lawyer's firm is in a position to improperly influence any court or other public body or office;

(6) contains any endorsement or testimonial, unless the communication clearly and conspicuously states that any result that the endorsed lawyer or law firm may achieve on behalf of one client in one matter does not necessarily indicate that similar results can be obtained for other clients;

(7) states or implies that one or more persons depicted in the communication are lawyers who practice with the lawyer or the lawyer's firm if they are not;

(8) states or implies that one or more persons depicted in the communication are current clients

or former clients of the lawyer or the lawyer's firm if they are not, unless the communication clearly and conspicuously discloses that the persons are actors or actresses;

(9) states or implies that one or more current or former clients of the lawyer or the lawyer's firm have made statements about the lawyer or the lawyer's firm, unless the making of such statements can be factually substantiated;

(10) contains any dramatization or recreation of events, such as an automobile accident, a courtroom speech or a negotiation session, unless the communication clearly and conspicuously discloses that a dramatization or recreation is being presented;

(11) is false or misleading in any manner not otherwise described above; or

(12) violates any other Rule of Professional Conduct or any statute or regulation applicable to solicitation, publicity or advertising by lawyers.

(b) An unsolicited communication about a lawyer or the lawyer's firm in which services are being offered must be clearly and conspicuously identified as an advertisement unless it is apparent from the context that it is an advertisement.

(c) An unsolicited communication about a lawyer or the lawyer's firm in which services are being offered must clearly identify the name and post office box or street address of the office of the lawyer or law firm whose services are being offered.

(d) A lawyer may pay others for disseminating or assisting in the dissemination of communications about the lawyer or the lawyer's firm only to the extent permitted by Rule 7.2.

(e) A lawyer may not engage in joint or group advertising involving more than one lawyer or law firm unless the advertising complies with Rules 7.1, 7.2, and 7.3 as to all involved lawyers or law firms. Notwithstanding this rule, a bona fide lawyer referral service need not identify the names and addresses of participating lawyers.

RULE 7.2 ADVERTISING

(a) A lawyer may pay the cost of advertisements permitted by these rules and may hire employees or independent contractors to assist as consultants or advisors in marketing a lawyer's or law firm's services. A lawyer shall not otherwise compensate or give anything of value to a person or organization to promote, recommend or secure employment by a client, or as a reward for having made a recommendation resulting in employment by a client, except as permitted by paragraph (c) or Rule 1.17.

(b) A lawyer shall not request or knowingly permit a person or organization to promote, recommend or secure employment by a client through any means that involves false or misleading communications about the lawyer or the lawyer's firm. If a lawyer learns that employment by a client has resulted from false or misleading communications about the lawyer or the lawyer's firm, the lawyer shall so inform the client.

(c) A lawyer or law firm may be recommended, employed or paid by, or cooperate with, a prepaid legal services plan, lawyer referral service, legal service organization or other similar plan, service or organization so long as:

(1) the operation of such plan, service or organization does not result in the lawyer or the lawyer's firm violating Rule 5.4, Rule 5.5, ORS 9.160, or ORS 9.500 through 9.520;

(2) the recipient of legal services, and not the plan, service or organization, is recognized as the client;

(3) no condition or restriction on the exercise of any participating lawyer's professional judgment on behalf of a client is imposed by the plan, service or organization; and

(4) such plan, service or organization does not make communications that would violate Rule 7.3 if engaged in by the lawyer.

RULE 7.3 DIRECT CONTACT WITH PROSPECTIVE 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:

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

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

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

(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 "Advertisement" in noticeable and clearly readable fashion 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 paragraph (a).

(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.

RULE 7.4 [RESERVED]

RULE 7.5 FIRM NAMES AND LETTERHEADS

(a) A lawyer may use professional announcement cards, office signs, letterheads, telephone and electronic directory listings, legal directory listings or other professional notices so long as the information contained therein complies with Rule 7.1 and other applicable Rules.

(b) A lawyer may be designated "Of Counsel" on a letterhead if the lawyer has a continuing professional relationship with a lawyer or law firm, other than as a partner or associate. A lawyer may be designated as "General Counsel" or by a similar professional reference on stationery of a client if the lawyer or the lawyer's firm devotes a substantial amount of professional time in the representation of the client.

(c) A lawyer in private practice:

(1) shall not practice under a name that is misleading as to the identity of the lawyer or lawyers practicing under such name or under a name that contains names other than those of lawyers in the firm;

(2) may use a trade name in private practice if the name does not state or imply a connection with a governmental agency or with a public or charitable legal services organization and is not otherwise in violation of Rule 7.1; and

(3) may use in a firm name the name or names of one or more of the retiring, deceased or retired members of the firm or a predecessor law firm in a continuing line of succession. The letterhead of a lawyer or law firm may give the names and dates of predecessor firms in a continuing line of succession and may designate the firm or a lawyer practicing in the firm as a professional corporation.

(d) Except as permitted by paragraph (c), a lawyer shall not permit his or her name to remain in the

name of a law firm or to be used by the firm during the time the lawyer is not actively and regularly practicing law as a member of the firm. During such time, other members of the firm shall not use the name of the lawyer in the firm name or in professional notices of the firm. This rule does not apply to periods of one year or less during which the lawyer is not actively and regularly practicing law as a member of the firm if it was contemplated that the lawyer would return to active and regular practice with the firm within one year.

(e) Lawyers shall not hold themselves out as practicing in a law firm unless the lawyers are actually members of the firm.

(f) Subject to the requirements of paragraph (c), a law firm practicing in more than one jurisdiction may use the same name in each jurisdiction, but identification of the firm members in an office of the firm shall indicate the jurisdictional limitations of those not licensed to practice in the jurisdiction where the office is located.

RULE 7.6 [RESERVED]

Exhibit B
Advertising Task Force
Proposed Oregon Rules of Professional Conduct

INFORMATION ABOUT LEGAL SERVICES

**RULE 7.1 COMMUNICATION CONCERNING
A LAWYER'S SERVICES**

(a) In communicating about potential or continuing employment of the lawyer or the lawyer's firm, a lawyer shall not:

(1) affirmatively or by omission make a knowingly false or misleading statement of material fact or law including but not limited to statements about the identity, experience, abilities, certifications, results that may be expected or achieved, actual or proposed terms of employment, licenses held or areas of practice of the lawyer, the lawyer's firm or any other lawyers or firms; or

(2) knowingly coerce or harass any person.

(b) An unsolicited communication about a lawyer or the lawyer's firm in which services are being offered must be clearly and conspicuously identified as an advertisement unless it is apparent from the context that it is a solicitation for professional employment.

(c) An unsolicited communication about a lawyer or the lawyer's firm in which services are being offered must clearly identify the name, city and state in which the office of the lawyer or law firm whose services are being offered is located.

RULE 7.2 [RESERVED]

RULE 7.3 [RESERVED]

RULE 7.4 [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.

RULE 7.6 [RESERVED]

Exhibit C

Advertising Task Force

Proposed Oregon Rules of Professional Conduct

(New material is underlined; material to be deleted is bracketed in [*italics*])

INFORMATION ABOUT LEGAL SERVICES

RULE 7.1 COMMUNICATION CONCERNING A LAWYER'S SERVICES

(a) In communicating about potential or continuing employment of the lawyer or the lawyer's firm, a lawyer shall not:

(1) affirmatively or by omission make a knowingly false or misleading statement of material fact or law including but not limited to statements about the identity, experience, abilities, certifications, results that may be expected or achieved, actual or proposed terms of employment, licenses held or areas of practice of the lawyer, the lawyer's firm or any other lawyers or firms; or

(2) knowingly coerce or harass any person.

[A lawyer shall not make or cause to be made any communication about the lawyer or the lawyer's firm, whether in person, in writing, electronically, by telephone or otherwise, if the communication:

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

(2) is intended or is reasonably likely to create a false or misleading expectation about results the lawyer or the lawyer's firm can achieve;

(3) except upon request of a client or potential client, compares the quality of the lawyer's or the lawyer's firm's services with the quality of the services of other lawyers or law firms;

(4) states or implies that the lawyer or the lawyer's firm specializes in, concentrates a practice in, limits a practice to, is experienced in, is presently handling or is qualified to handle matters or areas of law if the statement or implication is false or misleading;

(5) states or implies that the lawyer or the lawyer's firm is in a position to improperly

influence any court or other public body or office;

(6) contains any endorsement or testimonial, unless the communication clearly and conspicuously states that any result that the endorsed lawyer or law firm may achieve on behalf of one client in one matter does not necessarily indicate that similar results can be obtained for other clients;

(7) states or implies that one or more persons depicted in the communication are lawyers who practice with the lawyer or the lawyer's firm if they are not;

(8) states or implies that one or more persons depicted in the communication are current clients or former clients of the lawyer or the lawyer's firm if they are not, unless the communication clearly and conspicuously discloses that the persons are actors or actresses;

(9) states or implies that one or more current or former clients of the lawyer or the lawyer's firm have made statements about the lawyer or the lawyer's firm, unless the making of such statements can be factually substantiated;

(10) contains any dramatization or recreation of events, such as an automobile accident, a courtroom speech or a negotiation session, unless the communication clearly and conspicuously discloses that a dramatization or recreation is being presented;

(11) is false or misleading in any manner not otherwise described above; or

(12) violates any other Rule of Professional Conduct or any statute or regulation applicable to solicitation, publicity or advertising by lawyers.]

(b) An unsolicited communication about a lawyer or the lawyer's firm in which services are being offered must be clearly and conspicuously identified as an advertisement or solicitation of professional

employment unless it is apparent from the context that it is an advertisement.

(c) An unsolicited communication about a lawyer or the lawyer's firm in which services are being offered must clearly identify the name, [and post office box or street address of] city and state in which the office of the lawyer or law firm whose services are being offered is located.

[(d) A lawyer may pay others for disseminating or assisting in the dissemination of communications about the lawyer or the lawyer's firm only to the extent permitted by Rule 7.2.

(e) A lawyer may not engage in joint or group advertising involving more than one lawyer or law firm unless the advertising complies with Rules 7.1, 7.2, and 7.3 as to all involved lawyers or law firms. Notwithstanding this rule, a bona fide lawyer referral service need not identify the names and addresses of participating lawyers.]

RULE 7.2 [ADVERTISING] RESERVED]

[(a) A lawyer may pay the cost of advertisements permitted by these rules and may hire employees or independent contractors to assist as consultants or advisors in marketing a lawyer's or law firm's services. A lawyer shall not otherwise compensate or give anything of value to a person or organization to promote, recommend or secure employment by a client, or as a reward for having made a recommendation resulting in employment by a client, except as permitted by paragraph (c) or Rule 1.17.

(b) A lawyer shall not request or knowingly permit a person or organization to promote, recommend or secure employment by a client through any means that involves false or misleading communications about the lawyer or the lawyer's firm. If a lawyer learns that employment by a client has resulted from false or misleading communications about the lawyer or the lawyer's firm, the lawyer shall so inform the client.

(c) A lawyer or law firm may be recommended, employed or paid by, or cooperate with, a prepaid legal services plan, lawyer referral service, legal service organization or other similar plan, service or organization so long as:

(1) the operation of such plan, service or organization does not result in the lawyer or the lawyer's firm violating Rule 5.4, Rule 5.5, ORS 9.160, or ORS 9.500 through 9.520;

(2) the recipient of legal services, and not the plan, service or organization, is recognized as the client;

(3) no condition or restriction on the exercise of any participating lawyer's professional judgment on behalf of a client is imposed by the plan, service or organization; and

(4) such plan, service or organization does not make communications that would violate Rule 7.3 if engaged in by the lawyer.]

RULE 7.3 [DIRECT CONTACT WITH PROSPECTIVE CLIENTS] RESERVED]

[(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:

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

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

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

(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 "Advertisement" in noticeable and clearly readable fashion 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 paragraph (a).

(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.]

RULE 7.4 [RESERVED]

RULE 7.5 FIRM NAMES AND LETTERHEADS

[(a) A lawyer may use professional announcement cards, office signs, letterheads, telephone and electronic directory listings, legal directory listings or other professional notices so long as the information contained therein complies with Rule 7.1 and other applicable Rules.

(b) A lawyer may be designated "Of Counsel" on a letterhead if the lawyer has a continuing professional relationship with a lawyer or law firm, other than as a partner or associate. A lawyer may be designated as "General Counsel" or by a similar professional reference on stationery of a client if the lawyer or the lawyer's firm devotes a substantial amount of professional time in the representation of the client.

(c) A lawyer in private practice:

(1) shall not practice under a name that is misleading as to the identity of the lawyer or lawyers practicing under such name or under a name that contains names other than those of lawyers in the firm;

(2) may use a trade name in private practice if the name does not state or imply a connection with a governmental agency or with a public or charitable legal services organization and is not otherwise in violation of Rule 7.1; and

(3) may use in a firm name the name or names of one or more of the retiring, deceased or retired members of the firm or a predecessor law firm in a continuing line of succession. The letterhead of a lawyer or law firm may give the names and dates of predecessor firms in a continuing line of succession and may designate the firm or a lawyer practicing in the firm as a professional corporation.

(d) Except as permitted by paragraph (c), a lawyer shall not permit his or her name to remain in the name of a law firm or to be used by the firm during the time the lawyer is not actively and regularly practicing law as a member of the firm. During such time, other members of the firm shall not use the name of the lawyer in the firm name or in professional notices of the firm. This rule does not apply to periods of one year or less during which the lawyer is not actively and regularly practicing law as a member of the firm if it was contemplated that the lawyer would return to active and regular practice with the firm within one year.

(e) Lawyers shall not hold themselves out as practicing in a law firm unless the lawyers are actually members of the firm.

(f) Subject to the requirements of paragraph (c), a law firm practicing in more than one jurisdiction may use the same name in each jurisdiction, but identification of the firm members in an office of the firm shall indicate the jurisdictional limitations of those not licensed to practice in the jurisdiction where the office is located.]

(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.

RULE 7.6 [RESERVED]