

PROPOSED OREGON RPCS 7.1 THROUGH 7.5

(as recommended by the Legal Ethics Committee October 2012)

Current ORPC	Proposed ORPC	Explanation
<i>INFORMATION ABOUT LEGAL SERVICES</i>		
Rule 7.1 Communications Concerning a Lawyer's Services		
<p>(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:</p> <p>(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;</p> <p>(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;</p> <p>(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;</p> <p>(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</p>	<p>A lawyer shall not make a false or misleading communication about the lawyer or the lawyer's services. A communication is false or misleading if it contains a material misrepresentation of fact or law, or omits a fact necessary to make the statement considered as a whole not materially misleading.</p>	<p><i>The proposed new rule combines (a) and (a)(1) of the current rule and states the overarching prohibition against communications that are false or misleading either by misrepresentation or omission.</i></p> <p><i>The remaining specific prohibitions are eliminated, with the exception of (a)(4), which is now found in Rule 7.4.</i></p> <p><i>Eliminating a list of specific prohibitions will require lawyers to evaluate proposed communications on a case-by-case basis, but also focuses the analysis on the harm to be prevented, namely that communications not be false or misleading.</i></p> <p><i>The 2009 Advertising Task Force also recommended eliminating the enumerated list on the grounds that it was overbroad and underinclusive since it didn't include every prohibited type of communications while including some things that weren't necessarily either false or misleading.</i></p>

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<p>areas of law if the statement or implication is false or misleading;</p> <p>(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;</p> <p>(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;</p> <p>(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;</p> <p>(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;</p> <p>(9) states or implies that one or more current or former clients of the lawyer or the</p>		

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<p>lawyer's firm have made statements about the lawyer or the lawyer's firm, unless the making of such statements can be factually substantiated;</p> <p>(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;</p> <p>(11) is false or misleading in any manner not otherwise described above; or</p> <p>(12) violates any other Rule of Professional Conduct or any statute or regulation applicable to solicitation, publicity or advertising by lawyers.</p>		
<p>(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.</p>		<p><i>This prohibition is duplicative and unnecessary since a communication whose nature isn't clear from the context is very likely misleading if not false, which is covered above.</i></p>
<p>(c) An unsolicited communication about a lawyer or the lawyer's firm in which services are being</p>		<p><i>This prohibition is now found in Rule 7.2(c).</i></p>

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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.		<i>This provision adds nothing and is duplicative of Rule 7.2, where to and is addressed more particularly.</i>
(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.		<i>This is nothing more than another statement that communications are not permitted if they violate the "false or misleading" standard. It is an unnecessary duplication, particularly with reference to the provisions of Rules 7.2 and 7.3.</i>
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	(a) Subject to the requirements of Rules 7.1 and 7.3, a lawyer may advertise services through written, recorded or electronic communication, including public media.	<p><i>The new rule is a general permission for advertising in various media, provided the communications are not false or misleading and do not involve improper in-person contact.</i></p> <p><i>The current prohibition against paying someone else to recommend or secure employment is found in (b).</i></p>

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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.	<p>(b) A lawyer shall not give anything of value to a person for recommending the lawyer's services except that a lawyer may</p> <p>(1) pay the reasonable costs of advertisements or communications permitted by this Rule;</p> <p>(2) pay the usual charges of a legal service plan or a not-for-profit lawyer referral service; and</p> <p>(3) pay for a law practice in accordance with Rule 1.17.</p>	<p><i>The current rule's prohibition on allowing another to promote a lawyer through means involving false or misleading communications is eliminated as unnecessary in light of the overarching prohibition against false and misleading communications in Rule 7.1 and RPC 8.4, which makes it misconduct for a lawyer to violate the rules through the acts of another.</i></p> <p><i>New paragraph (b) continues the prohibition against paying another for recommending or securing employment subject to specific exceptions. New (b)(1) is virtually identical to current (a). New (b)(2) is currently found in ORPC 7.2(c).</i></p> <p><i>New (b)(3) reiterates language in current ORPC 1.5(e).</i></p> <p><i>The committee believes that the structure of the new rule is clearer.</i></p> <p><i>[Note: the proposal differs from ABA MR 7.2(b) in two significant respects. MR</i></p>

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		<p><i>7.2(b)(2) allows payment to a “qualified” lawyer referral service, which is defined as one approved an “an appropriate regulatory authority.” MR 7.2(b)(4) allows reciprocal referral agreements between lawyers or between lawyers and nonlawyer professionals, which is directly contradictory to Oregon RPC 5.4(e).]</i></p>
<p>(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:</p> <p>(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;</p> <p>(2) the recipient of legal services, and not the plan, service or organization, is recognized as the client;</p> <p>(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</p> <p>(4) such plan, service or</p>		<p><i>The permission to participate in legal service plans and referral services is in new Rule 7.2(b). The remainder of the current rule is unnecessary since all of the prohibited conduct is covered in other rules, including Oregon RPC 5.4, which prohibits lawyer from allowing their judgment to be influenced by others.</i></p>

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organization does not make communications that would violate Rule 7.3 if engaged in by the lawyer.		
	(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.	<i>This paragraph retains what is currently Oregon RPC 7.1(c).</i>
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.	(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.	<i>The proposed new rule is identical to current Oregon RPC 7.3(a).</i>
(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	(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	<i>The proposed rule retains Oregon's (b)(1), which was eliminated from the Model Rule for reasons that are not entirely clear.</i>

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<p>mental state of the prospective client is such that the person could not exercise reasonable judgment in employing a lawyer;</p> <p>(2) the prospective client has made known to the lawyer a desire not to be solicited by the lawyer; or</p> <p>(3) the solicitation involves coercion, duress or harassment.</p>	<p>mental state of the prospective client is such that the person could not exercise reasonable judgment in employing a lawyer;</p> <p>(2) the prospective client has made known to the lawyer a desire not to be solicited by the lawyer; or</p> <p>(3) the solicitation involves coercion, duress or harassment.</p>	
<p>(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).</p>	<p>(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" 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).</p>	<p><i>The new rule is virtually identical to the current rule, except that the new rule requires the words "Advertising Material" instead of "Advertisement." It also eliminates the requirement that the words be "in noticeable and clearly readable fashion," on the ground that the phrase is open to varying interpretation and because if the notification of "Advertising Material" isn't sufficiently readable it constitutes no notice and would be a violation of the rule.</i></p>
<p>(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</p>	<p>(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</p>	<p><i>The new rule is identical to the current rule.</i></p>

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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.	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)		
		<p><i>ABA MR 7.4 provides:</i></p> <p><i>Rule 7.4 Communication of Fields of Practice and Specialization</i></p> <p><i>(a) A lawyer may communicate the fact that the lawyer does or does not practice in particular fields of law.</i></p> <p><i>(b) A lawyer admitted to engage in patent practice before the United States Patent and Trademark Office may use the designation "Patent Attorney" or a substantially similar designation.</i></p> <p><i>(c) A lawyer engaged in Admiralty practice may use the designation "Admiralty," "Proctor in Admiralty" or a substantially similar designation.</i></p> <p><i>(d) A lawyer shall not state or imply that a lawyer is certified as a specialist in a particular field of law, unless:</i></p> <p><i>(1) the lawyer has been certified as a specialist by an organization that has been approved by an appropriate state authority or that has been accredited by the American Bar Association; and</i></p> <p><i>(2) the name of the certifying organization is clearly identified in the communication.</i></p> <p><i>The committee recommends not adopting any of the provisions on the ground that</i></p>

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		<i>they are unnecessarily duplicative of the overarching prohibition against false or misleading communications.</i>
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.	(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.	<i>This new rule is similar current Oregon RPC 7.5(a), but includes the permission to use a trade name that is currently in Oregon RPC 7.5(c)(2). The phrase "professional designation" is broad enough to capture the listings enumerated in the current rule as well as other, more modern, uses of firm names. It also includes the prohibition against falsely implying a connection with government or charitable organization that is currently in Oregon RPC 7.1(a)(5) and 7.5(c)(2).</i>
(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.	(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.	<i>The LEC recommends deleting current (b) as being an unnecessary focus on the business relationships between lawyers. The definition of "firm" continues to include Of Counsel, which the committee believes is sufficient to capture the conflict aspect of "of counsel" relationships. <i>The new rule retains the requirement of current Oregon RPC 7.5(f).</i></i>

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<p>(c) A lawyer in private practice:</p> <p>(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;</p> <p>(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</p> <p>(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.</p>	<p>(c) The name of a lawyer holding a public office shall not be used in the name of a law firm, or in communications on its behalf, during any substantial period in which the lawyer is not actively and regularly practicing with the firm.</p>	<p><i>The new rule is similar to the prohibition in current RPC 7.5(d), except that it applies only to lawyer holding public office.</i></p> <p><i>Current (c)(1) is essentially the same as new 7.5(d).</i></p> <p><i>Current (c)(2) is covered in new 7.5(a).</i></p> <p><i>Current (c)(3) is a relic of a prior era and is unnecessary in view of the accepted use of "legacy" law firm names or names that don't name any of the lawyers.</i></p>
<p>(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</p>	<p>(d) Lawyers may state or imply that they practice in a partnership or other organization only when that is a fact.</p>	<p><i>The new rule is a succinct but broad statement that covers much of what is currently in 7.5(c),(d) and (e).</i></p>

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<p>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.</p>		
<p>(e) Lawyers shall not hold themselves out as practicing in a law firm unless the lawyers are actually members of the firm.</p>		
<p>(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.</p>		<p><i>See proposed new 7.5(b) above.</i></p>