

ADVERTISING & SOLICITATION

MRPC 7.1-7.6

Bates v. State Bar of Arizona

433 U.S. 350 (1977)

First Amendment protects truthful newspaper advertising by lawyers regarding fees and services.

Former legal aid lawyers provided routine legal services for moderate income persons who could not qualify for governmental aid. They advertised their fees and services, a violation of Arizona law. State Bar imposed a one week suspension of each lawyer.

Ohralik v. Ohio State Bar Association

436 U.S. 447 (1978)

- States may prohibit in-person solicitation by lawyers.

Ohralik v. Ohio State Bar Association

436 U.S. 447 (1978)

A lawyer, contacted the parents of one of the drivers injured in an automobile accident after hearing about the accident from another source, and learned that the 18-year-old daughter was hospitalized. He then approached the daughter at the hospital and offered to represent her.

After another visit with her parents, he again visited the accident victim in her hospital room, where she signed a contingent fee agreement. In the meantime, appellant approached the driver's 18-year-old female passenger - who also had been injured - at her home on the day she was released from the hospital; she agreed orally to a contingent fee arrangement.

Eventually, both young women discharged appellant as their lawyer, but he succeeded in obtaining a share of the driver's insurance recovery in settlement of his lawsuit against her for breach of contract.

In re Primus

436 U.S. 412 (1978)

- ACLU lawyer spoke in person to a group of women, and then through a letter, offering free legal services – **First Amendment protection protects this solicitation.**
- South Carolina had a policy of sterilizing certain women as a condition of receiving welfare. Primus sent letters to women who had been thus sterilized, offering the legal assistance of the ACLU.
- The South Carolina's Supreme Court disciplinary board reprimanded Primus for violating South Carolina bar rules against soliciting business. Primus appealed to the U.S. Supreme Court.

RULE 7.1 COMMUNICATIONS CONCERNING A LAWYER'S SERVICES

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

A communication is false or misleading if it contains a material misrepresentation of fact or law, or omits a fact necessary to make the statement considered as a whole not materially misleading.

RULE 7.1 COMMENTS

[2] Misleading truthful statements are also prohibited by this Rule. A truthful statement is misleading if it omits a fact necessary to make the lawyer's communication considered as a whole not materially misleading.

A truthful statement is also misleading if a substantial likelihood exists that it will lead a reasonable person to formulate a specific conclusion about the lawyer or the lawyer's services for which there is no reasonable factual foundation.

RULE 7.1 COMMENTS

[2] ...A truthful statement is also misleading if presented in a way that creates a substantial likelihood that a reasonable person would believe the lawyer's communication requires that person to take further action when, in fact, no action is required.

RULE 7.1 COMMENTS

[3] A communication 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.

RULE 7.1 COMMENTS

[3] . . . Similarly, an unsubstantiated claim about a lawyer's or law firm's services or fees, or an unsubstantiated comparison of the lawyer's or law firm's services or fees with those of other lawyers or law firms, may be misleading if presented with such specificity as would lead a reasonable person to conclude that the comparison or claim can be substantiated.

The inclusion of an appropriate disclaimer or qualifying language may preclude a finding that a statement is likely to create unjustified expectations or otherwise mislead the public.

RULE 7.1 COMMENTS

[3] . . . Similarly, an unsubstantiated claim about a lawyer's or law firm's services or fees, or an unsubstantiated comparison of the lawyer's or law firm's services or fees with those of other lawyers or law firms, may be misleading if presented with such specificity as would lead a reasonable person to conclude that the comparison or claim can be substantiated.

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RULE 7.1 COMMENTS

[5] Firm names, letterhead and professional designations are communications concerning a lawyer's services.

A firm may be designated by the names of all or some of its current members, by the names of deceased members where there has been a succession in the firm's identity or by a trade name if it is not false or misleading.

A lawyer or law firm also may be designated by a distinctive website address, social media username or comparable professional designation that is not misleading.

RULE 7.1 COMMENTS

[5] ...A law firm name or designation is misleading if it implies a connection with a government agency, with a deceased lawyer who was not a former member of the firm, with a lawyer not associated with the firm or a predecessor firm, with a nonlawyer or with a public or charitable legal services organization.

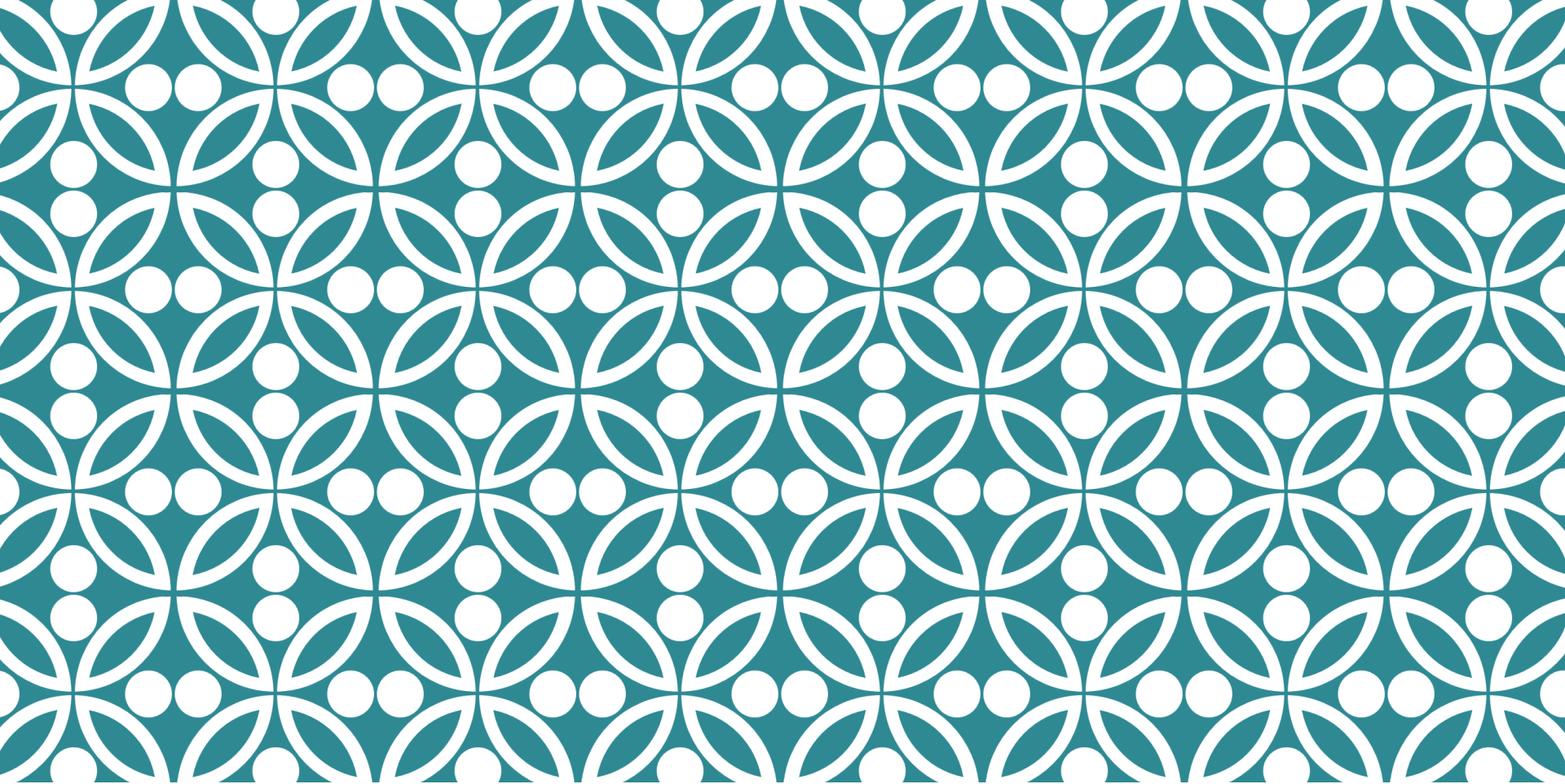
If a firm uses a trade name that includes a geographical name such as Springfield Legal Clinic,” an express statement explaining that it is not a public legal aid organization may be required to avoid a misleading implication.

RULE 7.1 COMMENTS

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

RULE 7.1 COMMENTS

[8] It is misleading to use the name of a lawyer holding a public office in the name of a law firm, or in communications on the law firm's behalf, during any substantial period in which the lawyer is not actively and regularly practicing with the firm.



RULE 7.2 — ADVERTISING

MRPC 7.1-7.6

RULE 7.2 - ADVERTISING

**(a) A lawyer may advertise
communicate information regarding the
lawyer's services through any media.**

RULE 7.2 - ADVERTISING

(b) A lawyer shall not compensate, give or promise 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 service plan or a not-for-profit or qualified lawyer referral service.;

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

RULE 7.2 - ADVERTISING

- b) A lawyer shall not give anything of value to a person for recommending the lawyer's services except that a lawyer may
- (4) refer clients to another lawyer or a nonlawyer professional 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.

RULE 7.2 - ADVERTISING

b) A lawyer shall not give anything of value to a person for recommending the lawyer's services except that a lawyer may

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

[added 2018]

RULE 7.2 - ADVERTISING

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

(1) the lawyer has been certified as a specialist by an organization that has been approved by an appropriate authority of the state or the District of Columbia or a U.S. Territory or that has been accredited by the American Bar Association; and

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

RULE 7.2 - ADVERTISING

(d) Any communication made under this rule must include the contact information of at least one lawyer or law firm responsible for its content.

RULE 7.2 - COMMENTS

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

RULE 7.2 - COMMENTS

[2] Except as permitted under paragraphs (b)(1)-(b), lawyers are not permitted to pay others for recommending the lawyer's services.

A communication contains a recommendation if it endorses or vouches for a lawyer's credentials, abilities, competence, character, or other professional qualities. Directory listings and group advertisements that list lawyers by practice area, without more, do not constitute impermissible "recommendations."

RULE 7.2 - COMMENTS

[4] Paragraph (b)(5) permits lawyers to give nominal gifts as an expression of appreciation to a person for recommending the lawyer's services or referring a prospective client. **The gift may not be more than a token item as might be given for holidays, or other ordinary social hospitality.**

A gift is prohibited if offered or given in consideration of any promise, agreement or understanding that such a gift would be forthcoming or that referrals would be made or encouraged in the future.

RULE 7.2 - COMMENTS

[5] A lawyer may pay others for generating client leads, such as Internet-based client leads, as long as the lead generator does not recommend the lawyer, any payment to the lead generator is consistent with Rules 1.5(e) (division of fees) and 5.4 (professional independence of the lawyer), and the lead generator's communications are consistent with Rule 7.1 (communications concerning a lawyer's services).

RULE 7.2 - COMMENTS

[5]...To comply with Rule 7.1, a lawyer must not pay a lead generator that states, implies, or creates a reasonable impression that it is recommending the lawyer, is making the referral without payment from the lawyer, or has analyzed a person's legal problems when determining which lawyer should receive the referral.

RULE 7.2 - COMMENTS

[6] A lawyer may pay the usual charges of a legal service plan or a not-for-profit or qualified lawyer referral service. A legal service plan is a prepaid or group legal service plan or a similar delivery system that assists people who seek to secure legal representation.

A lawyer referral service, on the other hand, is any organization that holds itself out to the public as a lawyer referral service.

RULE 7.2 - COMMENTS

[8] A lawyer also may agree to refer clients to another lawyer or a nonlawyer professional, 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. . .

RULE 7.2 - COMMENTS

[8]. . . Except as provided in Rule 1.5(e), a lawyer who receives referrals from a lawyer or nonlawyer professional must not pay anything solely for the referral, but the lawyer does not violate paragraph (b) of this Rule by agreeing to refer clients to the other lawyer or nonlawyer professional, so long as the reciprocal referral agreement is not exclusive and the client is informed of the referral agreement.

RULE 7.2 - COMMENTS

[8] . . . Conflicts of interest created by such arrangements are governed by Rule 1.7. Reciprocal referral agreements should not be of indefinite duration and should be reviewed periodically to determine whether they comply with these Rules.

This Rule does not restrict referrals or divisions of revenues or net income among lawyers within firms comprised of multiple entities.

RULE 7.2 - COMMENTS

[9] Paragraph (a) of this Rule permits a lawyer to communicate that the lawyer does or does not practice in particular areas of law.

RULE 7.2 - COMMENTS

[9] . . . A lawyer is generally permitted to state that the lawyer “concentrates in” or is a “specialist,” practices a “specialty,” or “specializes in” particular fields based on the lawyer’s experience, specialized training or education, but such communications are subject to the “false and misleading” standard applied in Rule 7.1 to communications concerning a lawyer’s services.

RULE 7.2 - COMMENTS

[1 1] This Rule permits a lawyer to state that the lawyer is certified as a specialist in a field of law if such certification is granted by an organization approved by an appropriate authority of a state, the District of Columbia or a U.S. Territory or accredited by the American Bar Association or another organization, such as a state supreme court or a state bar association, that has been approved by the authority of the state, the District of Columbia or a U.S. Territory to accredit organizations that certify lawyers as specialists.

RULE 7.2 - COMMENTS

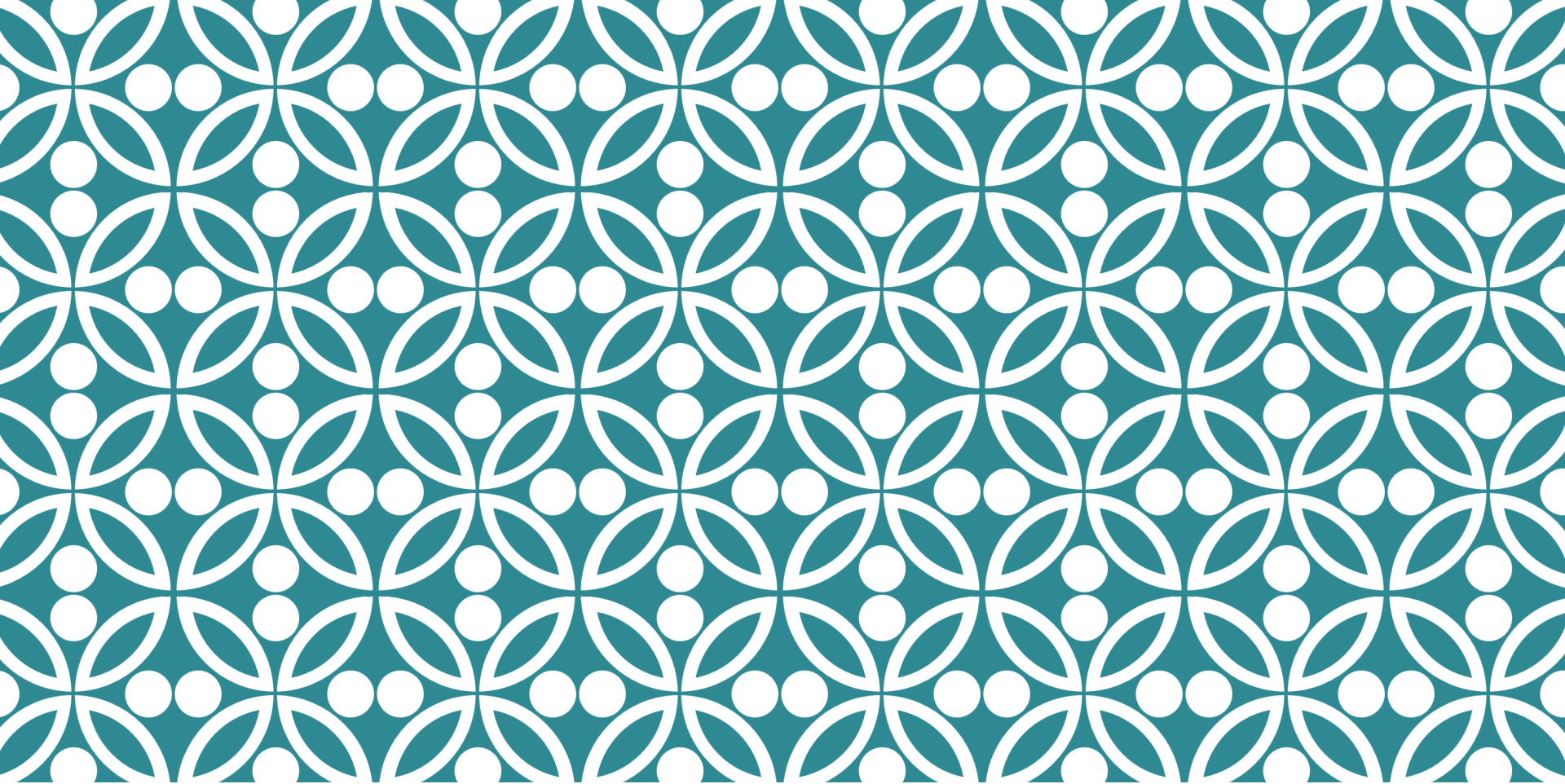
[11] ...Certification signifies that an objective entity has recognized an advanced degree of knowledge and experience in the specialty area greater than is suggested by general licensure to practice law. Certifying organizations may be expected to apply standards of experience, knowledge and proficiency to ensure that a lawyer's recognition as a specialist is meaningful and reliable.

To ensure that consumers can obtain access to useful information about an organization granting certification, the name of the certifying organization must be included in any communication regarding the certification.

RULE 7.2 - COMMENTS

Required Contact Information

[1 2] This Rule requires that any communication about a lawyer or law firm's services include the name of, and contact information for, the lawyer or law firm. Contact information includes a website address, a telephone number, an email address or a physical office location.



RULE 7.3 — SOLICITATION OF CLIENTS

**Direct Contact
with
Prospective
Clients**

RULE 7.3: DIRECT CONTACT WITH PROSPECTIVE CLIENTS

(a) “Solicitation” or “solicit” denotes a communication initiated by or on behalf of a lawyer or law firm that is directed to a specific person the lawyer knows or reasonably should know needs legal services in a particular matter and that offers to provide, or reasonably can be understood as offering to provide, legal services for that matter. [changed 2018]

RULE 7.3: DIRECT CONTACT WITH PROSPECTIVE CLIENTS

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

(1) lawyer;

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

(3) person who routinely uses for business purposes the type of legal services offered by the lawyer
[added 2018]

RULE 7.3: DIRECT CONTACT WITH PROSPECTIVE CLIENTS

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

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

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

RULE 7.3: DIRECT CONTACT WITH PROSPECTIVE CLIENTS

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

[added 2018]

RULE 7.3: DIRECT CONTACT WITH PROSPECTIVE CLIENTS

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

RULE 7.3: COMMENTS

[2] “Live person-to-person contact” means in-person, face-to-face, live telephone and other real-time visual or auditory person-to-person communications, where the person is subject to a direct personal encounter without time for reflection.

Such person-to-person contact does not include chat rooms, text messages or other written communications that recipients may easily disregard.

RULE 7.3: COMMENTS

[2] There is a potential for abuse when a solicitation involves direct in-person, live telephone or real-time electronic contact by a lawyer with someone known to need legal services.

These forms of contact subject a person to the private importuning of the trained advocate in a direct interpersonal encounter.

RULE 7.3: COMMENTS

[5] There is far less likelihood that a lawyer would engage in overreaching against a former client, or a person with whom the lawyer has a close personal, family, or business relationship, or in situations in which the lawyer is motivated by considerations other than the lawyer's pecuniary gain. Nor is there a serious potential for overreaching when the person contacted is a lawyer or is known to routinely use the type of legal services involved for business purposes.

RULE 7.3: COMMENTS

[5] Examples include persons who routinely hire outside counsel to represent the entity; entrepreneurs who regularly engage business, employment law or intellectual property lawyers; small business proprietors who regularly routinely hire lawyers for lease or contract issues; and other people who routinely regularly retain lawyers for business transactions or formations.

RULE 7.3: COMMENTS

[5] Paragraph (a) is not intended to prohibit a lawyer from participating in constitutionally protected activities of public or charitable legal-service organizations or bona fide political, social, civic, fraternal, employee or trade organizations whose purposes include providing or recommending legal services to their members or beneficiaries.

[added 2018]

RULE 7.3: COMMENTS

[6] . . . Live, person-to-person contact of individuals who may be especially vulnerable to coercion or duress is ordinarily not appropriate, for example, the elderly, those whose first language is not English, or the disabled. [added 2018]

RULE 7.3: COMMENTS

[7] This Rule does not prohibit a lawyer from contacting representatives of organizations or groups that may be interested in establishing a group or prepaid legal plan for their members, insureds, beneficiaries or other third parties for the purpose of informing such entities of the availability of and details concerning the plan or arrangement which the lawyer or lawyer's firm is willing to offer. This form of communication is not directed to people who are seeking legal services for themselves.

RULE 7.3: COMMENTS

[7] ...Rather, it is usually addressed to an individual acting in a fiduciary capacity seeking a supplier of legal services for others who may, if they choose, become prospective clients of the lawyer. Under these circumstances, the activity which the lawyer undertakes in communicating with such representatives and the type of information transmitted to the individual are functionally similar to and serve the same purpose as advertising permitted under Rule 7.2.

RULE 7.3: COMMENTS

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

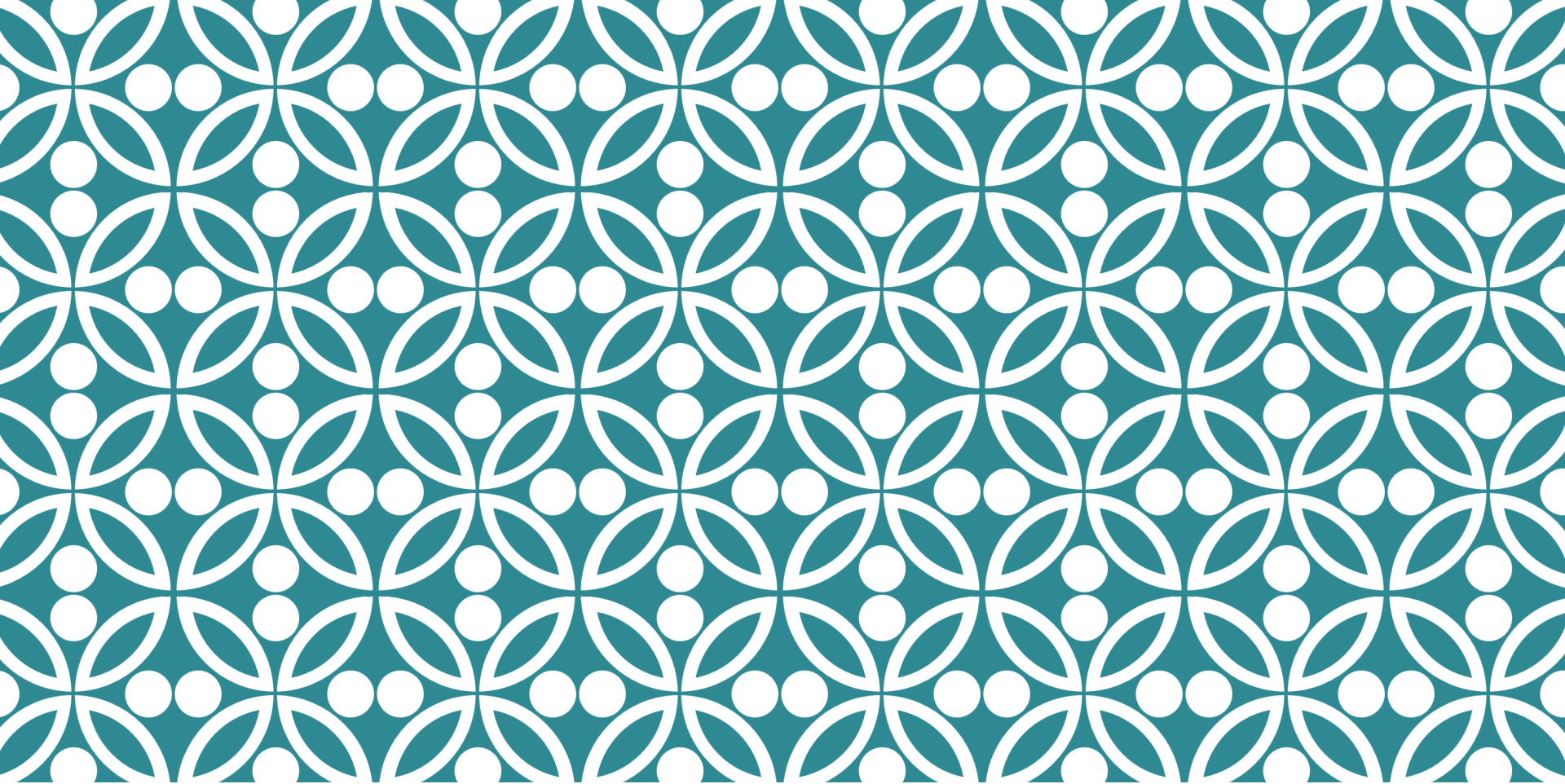
[added 2018]

TEXAS OPINION NO. 672 (MARCH 2018)

Questions: Does a written communication from a lawyer to employees in a particular position constitute direct mail solicitation if the communication does not directly offer to represent the recipients of the communication, but suggests to the recipients that they have claims because they are similarly situated to the plaintiffs in the lawsuit?

ANSWER: Whether the lawyer's communication in question constitutes direct mail solicitation turns on the lawyer's intent to seek professional employment, significantly motivated by a desire for pecuniary gain.

In this case, the content of the communications with employee-recipients and the related circumstances **could support** a conclusion that the communications were made for the purpose of obtaining professional employment.



**RULE 7.6 - POLITICAL
CONTRIBUTIONS TO OBTAIN
LEGAL ENGAGEMENTS OR
APPOINTMENTS BY JUDGES**

MRPC 7
**Information
About Legal
Services**

RULE 7.6 - POLITICAL CONTRIBUTIONS TO OBTAIN LEGAL ENGAGEMENTS OR APPOINTMENTS BY JUDGES

A lawyer or law firm shall not accept a government legal engagement or an appointment by a judge if the lawyer or law firm makes a political contribution or solicits political contributions for the purpose of obtaining or being considered for that type of legal engagement or appointment.

RULE 7.6 - COMMENTS

[2] The term "political contribution" denotes any gift, subscription, loan, advance or deposit of anything of value made directly or indirectly to a candidate, incumbent, political party or campaign committee to influence or provide financial support for election to or retention in judicial or other government office.

Political contributions in initiative and referendum elections are not included. For purposes of this Rule, **the term "political contribution" does not include uncompensated services.**

RULE 7.6 - COMMENTS

[3] Subject to the exceptions below, (i) the term "government legal engagement" denotes any engagement to provide legal services that a public official has the direct or indirect power to award; and (ii) the term "appointment by a judge" denotes an appointment to a position such as referee, commissioner, special master, receiver, guardian or other similar position that is made by a judge.

RULE 7.6 - COMMENTS

[3] . . . Those terms do not, however, include (a) substantially uncompensated services; (b) engagements or appointments made on the basis of experience, expertise, professional qualifications and cost following a request for proposal or other process that is free from influence based upon political contributions; and (c) engagements or appointments made on a rotational basis from a list compiled without regard to political contributions.

RULE 7.6 - COMMENTS

[5] Political contributions are for the purpose of obtaining or being considered for a government legal engagement or appointment by a judge if, but for the desire to be considered for the legal engagement or appointment, the lawyer or law firm would not have made or solicited the contributions.

The purpose may be determined by an examination of the circumstances in which the contributions occur.

RULE 7.6 - COMMENTS

[5] ...Those factors may include among others that the contribution or solicitation was made to further a political, social, or economic interest or because of an existing personal, family, or professional relationship with a candidate.