

Minutes of the Meeting
Rules Committee
Wednesday, March 27, 2019

On Wednesday, March 27, 2019, the Rules Committee met in the Supreme Court courtroom from 2:03 p.m. to 2:39 p.m.

Members in attendance were:

HON. ANDREW J. McDONALD, CHAIR
HON. BARBARA N. BELLIS
HON. MELANIE L. CRADLE
HON. DONNA NELSON HELLER
HON. KEVIN G. DUBAY
HON. DAVID M. SHERIDAN
HON. BARRY K. STEVENS

Also in attendance were Joseph J. Del Ciampo, Counsel to the Rules Committee; Attorney Lori Petruzzelli; and Attorney Shanna O'Donnell of the Judicial Branch's Legal Services Unit. Judges Joan K. Alexander and Sheila A. Ozalis were not present.

1. The Committee approved the minutes of the meeting held on March 18, 2019. Judge Dubay abstained.

2. The Committee considered a proposal by Judge Conway for a new rule allowing for the presence of a detained child at certain detention hearings by means of an interactive audio visual device.

After discussion, the Committee voted to submit to public hearing proposed new Section 30-12, as set forth in Appendix A, attached to these minutes.

3. The Committee considered a proposal by the Connecticut Sentencing Commission to amend Section 38-8 regarding ten percent cash bail.

Judge Robert J. Devlin, Chair of the Connecticut Sentencing Commission, and Alex Tsarkov, Executive Director of the Connecticut Sentencing Commission, were present and addressed the Committee.

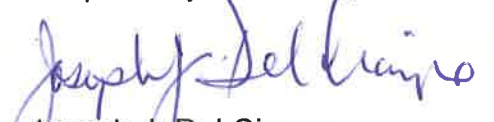
After discussion, the Committee voted to submit to public hearing the amendment to Section 38-8, as set forth in Appendix B, attached to these minutes.

4. The Committee considered a revised proposal to amend Rules 7.1-7.5 of the Rules of Professional Conduct to conform those rules with the ABA's August 2018 amendments to its Model Rules of Professional conduct concerning lawyer advertising.

Attorney Marcy Tench Stovall, Chair of the CBA Committee on Professional Ethics, and Attorney Michael P. Bowler, Statewide Bar Counsel, were present and addressed the Committee regarding the proposal.

After discussion, the Committee voted to submit to public hearing the amendments to Rules 7.1-7.5 of the Rules of Professional Conduct and to Section 2-28A of the Connecticut Practice Book, as set forth in Appendix C, attached to these minutes.

Respectfully submitted,



Joseph J. Del Ciampo
Counsel to the Rules Committee

Appendix A (032719)

(NEW) Sec. 30-12. Where Presence of a Detained Child May Be by Means of an Interactive Audiovisual Device

(a) The appearance of a detained child for proceedings held in accordance with Sections 30-10 and 30-11 may, with the consent of the detained child, the consent of counsel for the detained child, and in the discretion of the judicial authority on motion of a party or on its own motion, be made by means of an interactive audiovisual device. Such interactive audiovisual device must operate so that such detained child, counsel, and the judicial authority if the proceeding is in court, can see and communicate with each other simultaneously. In addition, a procedure by which such detained child can confer with counsel in private must be provided.

(b) Unless otherwise required by law or unless otherwise ordered by the judicial authority, prior to a detention hearing in which a detained child appears by means of an interactive audiovisual device, copies of all documents which may be offered at the detention hearing shall be provided to all counsel.

COMMENTARY: This new rule provides for a detained child to appear by means of an interactive audiovisual device at detention hearings held in accordance with Sections 30-10 and 30-11.

Appendix B (032719)

Sec. 38-8. Ten Percent Cash Bail

Unless otherwise ordered by the judicial authority, 10 percent cash bail shall be automatically available for surety bonds not exceeding \$20,000. For surety bond amounts exceeding \$20,000, 10% cash bail may be granted pursuant to an order of the judicial authority. This 10 percent option applies to bonds set by court as well as bonds set at the police department.

When 10 percent cash bail is [granted] authorized either automatically or pursuant to court order, upon the depositing in cash, by the defendant or any person in his or her behalf other than a paid surety, of 10 percent of the surety bond set, the defendant shall thereupon be admitted to bail in the same manner as a defendant who has executed a bond for the full amount. If such bond is forfeited, the defendant shall be liable for the full amount of the bond. Upon discharge of the bond, the 10 percent cash deposit made with the clerk shall be returned to the person depositing the same, less any fee that may be required by statute.

COMMENTARY: The change to this section will allow for 10 percent cash bail to be automatically available for surety bonds under \$20,000 both at court and at the police department.

APPENDIX C (032719)

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.

COMMENTARY

This Rule governs all communications about a lawyer's services, including advertising [permitted by Rule 7.2]. Whatever means are used to make known a lawyer's services, statements about them must be truthful. [Statements, even if literally true, that are m]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 [there is] 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. A truthful statement also is misleading if presented in a way that leads a reasonable person to believe the lawyer's communication requires that person to take further action when, in fact, no action is required.

A[n advertisement] communication that truthfully reports a lawyer's achievements on behalf of clients or former clients may be misleading if presented without a disclaimer indicating that the communicated result is based upon the particular facts of that case so as to lead a reasonable person to form an unjustified expectation that the same results could be obtained for other clients in similar matters without reference to the specific factual and legal circumstances of each client's case. Similarly, an unsubstantiated claim about a lawyer's or law firm's services or fees, or an unsubstantiated comparison of the lawyer's services or fees with [the services or fees] 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.

It is professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit or misrepresentation. Rule 8.4 (3). See also Rule 8.4 (5) for the prohibition against stating or implying an ability to improperly influence [improperly] a government agency or official or to achieve results by means that violate the Rules of Professional Conduct.

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 or retired 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. 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.

Letterhead identification of the lawyers in the office of the firm shall indicate the jurisdictional limitations on those not licensed to practice in the jurisdiction where the office is located.

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

Lawyers may not imply or hold themselves out as practicing together in one firm when they are not a firm, as defined in Rule 1.0 (d), because to do so would be false and misleading.

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.

AMENDMENT NOTE: The purpose of the amendments to Rules 7.1–7.5 and to Section 2-28A is to incorporate the 2018 amendments to the American Bar Association's Model Rules of Professional Conduct concerning attorney advertising.

**Rule 7.2. [Advertising]Communications Concerning a Lawyer's Services:
Specific Rules**

(a) [Subject to the requirements set forth in Rules 7.1 and 7.3, a]A lawyer may [advertise] communicate information regarding the lawyer's services through [written, recorded or electronic communication, including public] any media.

(b) (1) A copy or recording of a[n advertisement or] communication regarding the lawyer's services shall be kept for three years after its last dissemination along with a record of when and where it was used. An electronic [advertisement or] communication regarding the lawyer's services shall be copied once every three months on a compact disc or similar technology and kept for three years after its last dissemination.

(2) A lawyer shall comply with the mandatory filing requirement of Practice Book Section 2-28A.

(c) 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 cost of advertisements or communications permitted by this Rule;

(2) pay the usual charges of a not-for-profit or qualified lawyer referral service[. A qualified lawyer referral service is a lawyer referral service that has been approved by an appropriate regulatory authority];

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

(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:

(A) the reciprocal referral agreement is not exclusive; and

(B) the client is informed of the existence and nature of the agreement; and

(5) give a nominal gift as an expression of appreciation, provided that such a gift is neither intended nor reasonably expected to be a form of compensation for recommending a lawyer's services, and such gifts are limited to no more than two per year to any recipient.

(d) 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 is currently certified as a specialist in that field of law by a board or other entity which is approved by the Rules Committee of the superior court of this state or by an organization accredited by the American Bar Association; and

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

[(d)](e) Any [advertisement or] communication made [pursuant to] under this Rule [shall] must include the name and contact information of at least one lawyer admitted in Connecticut responsible for its content. In the case of television advertisements, the name, address and telephone number of the lawyer admitted in Connecticut shall be displayed in bold print for fifteen seconds or the duration of the commercial, whichever is less, and shall be prominent enough to be readable.

[(e) Advertisements on the electronic media such as television and radio may contain the same factual information and illustrations as permitted in advertisements in the print media.]

(f) Every [advertisement and written] communication that contains information about the lawyer's fee, including those indicating that the charging of a fee is contingent on outcome, or that no fee will be charged in the absence of a recovery, or that the fee will be a percentage of the recovery, shall disclose whether and to what extent the client will be responsible for any court costs and expenses of litigation. The disclosure concerning court costs and expenses of litigation shall be in the same print size and type as the information regarding the lawyer's fee and, if broadcast, shall appear for the same duration as the information regarding the lawyer's fee. If the information regarding the fee is spoken, the disclosure concerning court costs and expenses of litigation shall also be spoken.

(g) A lawyer who [advertises] communicates a specific fee or range of fees for a particular service shall honor the [advertised] fee or range of fees described in the communication for at least ninety days unless the [advertisement] communication specifies a shorter period; provided that, for [advertisements] communications in the yellow pages of telephone directories or other media not published more frequently than annually, the [advertised] fee or range of fees described in the communication shall be honored for no less than one year following publication.

[(h) No lawyers shall directly or indirectly pay all or part of the cost of an advertisement by a lawyer not in the same firm unless the advertisement discloses the name and address of the nonadvertising lawyer, and whether the advertising lawyer may refer any case received through the advertisement to the nonadvertising lawyer.

(i) The following information in advertisements and written communications shall be presumed not to violate the provisions of Rule 7.1:

(1) Subject to the requirements of Rule 7.3, the name of the lawyer or law firm, a listing of lawyers associated with the firm, office addresses and telephone numbers, office and telephone service hours, fax numbers, website and e-mail addresses and domain names, and a designation such as "attorney" or "law firm."

(2) Date of admission to the Connecticut bar and any other bars and a listing of federal courts and jurisdictions where the lawyer is licensed to practice.

(3) Technical and professional licenses granted by the state or other recognized licensing authorities.

(4) Foreign language ability.

(5) Fields of law in which the lawyer practices or is designated, subject to the requirements of Rule 7.4, or is certified pursuant to Rule 7.4A.

(6) Prepaid or group legal service plans in which the lawyer participates.

(7) Acceptance of credit cards.

(8) Fee for initial consultation and fee schedule.

(9) A listing of the name and geographic location of a lawyer or law firm as a sponsor of a public service announcement or charitable, civic or community program or event.

(10) Nothing in this Rule prohibits a lawyer or law firm from permitting the inclusion in the law directories intended primarily for the use of the legal profession of such information as has traditionally been included in these publications.]

[(j)](h) [Notwithstanding the provisions of subsection (d), a]A lawyer and service may participate in an internet based client to lawyer matching service, provided the service otherwise complies with the Rules of Professional Conduct. If the service provides an exclusive referral to a lawyer or law firm for a particular practice area in a particular geographical region, then the service must comply with subsection [(d)](e).

COMMENTARY

[To assist the public in learning about and 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.]

This Rule permits public dissemination of information concerning a lawyer or law firm's name [or firm name], address, e-mail 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; whether and to what extent the client will be responsible for any court costs and expenses of litigation; 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.

[Questions of effectiveness and taste in advertising are matters of speculation and subjective judgment. Some jurisdictions have had extensive prohibitions against television advertising and other forms of advertising, against advertising going beyond specified facts about a lawyer, or against "undignified" advertising. Television, the Internet, and other forms of electronic communication are now among the most powerful media for getting information to the public, particularly persons of low and moderate income; prohibiting television, Internet, and other forms of electronic 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.

Neither this Rule nor Rule 7.3 prohibits communications authorized by law, such as notice to members of a class in class action litigation.]

Record of [Advertising] Communications. Subsection (b) requires that a record of the content and use of advertising be kept in order to facilitate enforcement of this Rule. It does not require that advertising be subject to review prior to dissemination. Such a requirement would be burdensome and expensive relative to its possible benefits, and may be of doubtful constitutionality.

Paying Others To Recommend a Lawyer. Except as permitted under subsection (c) (1) through (c) [(3)](5), lawyers are not permitted to pay others for recommending the lawyer's services [or for channeling professional work in a manner that violates Rule 7.3]. 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."

Subsection (c) (1)[, however,] allows a lawyer to pay for advertising and communications permitted by this Rule, including the costs of print directory list on-line directory listings, newspaper advertisements, television and radio airtime, domain name registrations, sponsorship fees, advertisements, Internet-based advertisements, and group advertising. A lawyer may compensate employees, agents and vendors who are engaged to provide marketing or client development services, such as publicists, public

relations personnel, business development staff, television and radio employees or spokespersons, and website designers. See also Rule 5.3 (duties of lawyers and law firms with respect to the conduct of nonlawyers); Rule 8.4 (a) (duty to avoid violating the Rules through the acts of another).

Pursuant to subsection (c) (4), 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. See Rules 2.1 and 5.4 (c). 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 subsection (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. 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.

Subsection (c) (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 the value of the gift is more than \$50, or otherwise indicates a sharing of either legal fees or the ultimate recovery in the referred case, or if the gift is 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.

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). 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. See Comment above (definition of "recommendation"). See also Rule 5.3 (duties of lawyers and law firms with respect to the conduct of nonlawyers); Rule 8.4 (a) (duty to avoid violating the Rules through the acts of another).

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. Such referral services are understood

by the public to be consumer oriented organizations that provide unbiased referrals to lawyers with appropriate experience in the subject matter of the representation and afford other client protections, such as complaint procedures or malpractice insurance requirements. Consequently, this Rule only permits a lawyer to pay the usual charges of a not-for-profit or qualified lawyer referral service. A qualified lawyer referral service is one that is approved by an appropriate regulatory authority as affording adequate protections for the public. See, e.g., the American Bar Association's Model Supreme Court Rules Governing Lawyer Referral Services and Model Lawyer Referral and Information Service Quality Assurance Act [(requiring that organizations that are identified as lawyer referral services: [i] permit the participation of all lawyers who are licensed and eligible to practice in the jurisdiction and who meet reasonable objective eligibility requirements as may be established by the referral service for the protection of the public; [ii] require each participating lawyer to carry reasonably adequate malpractice insurance; [iii] act reasonably to assess client satisfaction and address client complaints; and [iv] do not make referrals to lawyers who own, operate or are employed by the referral service)].

A lawyer who accepts assignments or referrals from a legal service plan or referrals from a lawyer referral service must act reasonably to assure that the activities of the plan or service are compatible with the lawyer's professional obligations. See Rule 5.3. Legal service plans and lawyer referral services may communicate with the public, but such communication must be in conformity with these Rules. Thus, advertising must not be false or misleading, as would be the case if the communications of a group advertising program or a group legal services plan would mislead the public to think that it was a lawyer referral service sponsored by a state agency or bar association. [Nor could the lawyer allow in person, telephonic, or real-time contacts that would violate Rule 7.3.]

Communications about Fields of Practice. Subsection (a) of this Rule permits a lawyer to communicate that the lawyer does or does not practice in particular areas of law. A lawyer is generally permitted to state that the lawyer "concentrates in," "focuses on," or that the practice is "limited to" particular fields of practice, but such communications are subject to the "false and misleading" standard applied in Rule 7.1 to communications concerning a lawyer's services.

The Patent and Trademark Office has a long-established policy of designating lawyers practicing before the Office. The designation of Admiralty practice also has a long historical tradition associated with maritime commerce and the federal courts. A lawyer's communications about these practice areas are not prohibited by this Rule.

This Rule permits a lawyer to state that the lawyer is certified as a specialist in a field of law if such the lawyer is currently certified as a specialist in that field of law by a board or other entity which is approved by the Rules Committee of the superior court of this state or by an organization accredited by the American Bar Association. 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.

Required Contact Information. 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 e-mail address or a physical office location.

AMENDMENT NOTE: The purpose of the amendments to Rules 7.1–7.5 and to Section 2-28A is to incorporate the 2018 amendments to the American Bar Association's Model Rules of Professional Conduct concerning attorney advertising.

Rule 7.3. Solicitation of 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.

[(a)](b) A lawyer shall not [initiate personal,] solicit professional employment by live [telephone, or real-time electronic] person-to-person contact[, including telemarketing contact, for the purpose of obtaining professional employment, except in the following circumstances:] when a significant motive for the lawyer's doing so is the lawyer's or law firm's pecuniary gain unless the contact is:

(1) [If the target of the solicitation is a close friend, relative, former client or one whom the lawyer reasonably believes to be a client] With a lawyer or a person who has a family, close personal or prior business or professional relationship with the lawyer;

(2) Under the auspices of a public or charitable legal services organization;

(3) Under the auspices of a bona fide political, social, civic, fraternal, employee or trade organization whose purposes include but are not limited to providing or recommending legal services, if the legal services are related to the principal purposes of the organization;

(4) [If the target of the solicitation is] With a person who routinely uses for business purposes the type of legal services offered by the lawyer or with a business organization, a not-for-profit organization or governmental body and the lawyer seeks to provide services related to the organization.

[(b)](c) A lawyer shall not [contact or send a written or electronic communication to any person for the purpose of obtaining] solicit professional employment even when not otherwise prohibited by subsection (b) if:

(1) The lawyer knows or reasonably should know that the physical, emotional or mental state of the person makes it unlikely that the person would exercise reasonable judgment in employing a lawyer;

(2) [It has been] The target of the solicitation has made known to the lawyer [that the person does not want to receive such communications from] a desire not to be solicited by the lawyer;

(3) The [communication] solicitation involves coercion, duress, fraud, overreaching, harassment, intimidation or undue influence;

[(4) The written communication concerns a specific matter and the lawyer knows or reasonably should know that the person to whom the communication is directed is represented by a lawyer in the matter;] or

[(5)](4) The [written or electronic communication] solicitation concerns an action for personal injury or wrongful death or otherwise relates to an accident or disaster involving the person to whom the [communication] solicitation is addressed or a relative of that person, unless the accident or disaster occurred more than forty days prior to the mailing of the [communication] solicitation, or the recipient is a person or entity within the scope of subsection (b) of this Rule.

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

[(c)](e) Every written [communication] solicitation, as well as any [communication] solicitation by audio or video recording, or other electronic means, used by a lawyer for the purpose of obtaining professional employment from anyone known to be in need of legal services in a particular matter, must be clearly and prominently labeled "Advertising Material" in red ink on the first page of any written [communication] solicitation and the lower left corner of the outside envelope or container, if any, and at the beginning and ending of any [communication] solicitation by audio or video recording or other electronic means. If the written [communication] solicitation is in the form of a self-mailing brochure or pamphlet, the label "Advertising Material" in red ink shall appear on the address panel of the brochure or pamphlet. [Brochures] Communications solicited by clients or any other person, or if the recipient is a person or entity within the scope of subsection (b) of this Rule, the solicitation need not contain such marks. No reference shall be made in the [communication] solicitation to the [communication] solicitation having any kind of approval from the Connecticut bar. Such written [communications] solicitations shall be sent only by regular United States mail, not by registered mail or other forms of restricted delivery.

[(d) The first sentence of any written communication concerning a specific matter shall be: "If you have already retained a lawyer for this matter, please disregard this letter."

(e) A written communication seeking employment in a specific matter shall not reveal on the envelope, or on the outside of a self-mailing brochure or pamphlet, the nature of the legal matter.

(f) If a contract for representation is mailed with the communication, the top of each page of the contract shall be marked "Sample" in bold letters in red ink in a type size one size larger than the largest type used in the contract and the words "Do Not Sign" in bold letters shall appear on the client signature line.

(g) Written communications shall be on letter-sized paper rather than legal-sized paper and shall not be made to resemble legal pleadings or other legal documents. This provision does not preclude the mailing of brochures and pamphlets.

(h) If a lawyer other than the lawyer whose name or signature appears on the communication will actually handle the case or matter, or if the case or matter will be referred to another lawyer or law firm, any written communication concerning a specific matter shall include a statement so advising the target of the solicitation.]

[(i)](f) Notwithstanding the prohibitions in [subsection (a)] 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 which uses [in-person or telephone] live person-to-person contact to [solicit] enroll members[hips] or sell subscriptions for the plan from persons who are not known to need legal services in a particular matter covered by the plan.

COMMENTARY

[A solicitation is a targeted communication initiated by the lawyer that is directed to a specific person and that offers to provide, or can reasonably be understood as offering to provide, legal services. In contrast, a] Subsection (b) prohibits a lawyer from soliciting professional employment by live person-to-person contact when a significant motive for the lawyer's doing so is the lawyer's or the law firm's pecuniary gain. A lawyer's communication [typically does not constitute] is not a solicitation if it is directed to the general public, such as through a billboard, an Internet banner advertisement, a website or a television commercial, or if it is in response to a request for information or is automatically generated in response to [Internet] electronic searches.

[Unrestricted solicitation involves definite social harms. Among these are harassment, overreaching, provocation of nuisance litigation and schemes for systematic fabrication of claims, all of which were experienced prior to adoption of restrictions on solicitation. Measures reasonably designed to suppress these harms are constitutionally legitimate. At the same time, measures going beyond realization of such objectives would appear to be invalid under relevant decisions of the United States Supreme Court.]

"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. A potential for overreaching exists when a lawyer, seeking pecuniary gain, solicits a person known to be in need of legal services. This form of contact subjects a person to the private importuning of the trained advocate in a direct interpersonal encounter. The person, who may already feel overwhelmed by the circumstances giving rise to the need for legal services, may find it difficult to fully evaluate all available alternatives with reasoned judgment and appropriate self-interest in the face of the lawyer's presence and insistence upon an immediate response. The situation is fraught with the possibility of undue influence, intimidation, and over-reaching.

The potential for [abuse] overreaching inherent in [direct in-person, live telephone or real time electronic solicitation] live person-to-person contact justifies [their] its prohibition, [particularly] since lawyers have alternative means of conveying necessary information [to those who may be in need of legal services]. In particular, communications can be mailed or transmitted by e-mail or other electronic means that [do not involve real time contact and] do not violate other laws [governing solicitations]. These forms of communications [and solicitations] make it possible for the public to be informed about the need for legal services, and about the qualifications of available lawyers and law firms, without subjecting the public to [direct in-person, telephone or real-time electronic] live person-to-person persuasion that may overwhelm a person's judgment.

[The use of general advertising and written, recorded and electronic communications to transmit information from lawyer to the public, rather than direct in-person, live telephone, or real-time electronic contact, will help to ensure that the information flows cleanly as well as freely. The contents of advertisements and communications permitted under Rule 7.2 can be permanently recorded so that they cannot be disputed and may be shared with others who know the lawyer. This potential for informal review is itself likely to help guard against statements and claims that might constitute false and misleading communications, in violation of Rule 7.1.] The contents of [direct in-person, live telephone, or real-time electronic] live person-to-person contact can be disputed and [are] may not be subject to a third-party scrutiny. Consequently, they are much more likely to approach (and occasionally cross) the dividing line between accurate representations and those that are false and misleading.

There is far less likelihood that a lawyer would engage in [abusive practices] overreaching against a former client, or a person with whom the lawyer has a close personal, [or] family, business or professional 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 [abuse] overreaching when the person contacted is a lawyer or is known to routinely use the type of legal services involved for business purposes. 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 routinely hire lawyers for lease or contract issues; and other people who routinely retain lawyers for business transactions or formations. [Consequently, the general prohibition in Rule 7.3 (a) and the requirements of Rule 7.3 (c) are not applicable in those situations. Also, nothing in this Commentary] Subsection (b) 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.

[In determining whether a contact is permissible under Rule 7.3 (b), it is relevant to consider the time and circumstances under which the contact is initiated. For example, a person undergoing active medical treatment for traumatic injury is unlikely to be in an emotional state in which reasonable judgment about employing a lawyer can be exercised. Moreover, if after sending a letter or other communication to a member of the

public as permitted by Rule 7.2 the lawyer receives no response, any further effort to communicate with the person may violate the provisions of Rule 7.3 (b).

The requirement in Rule 7.3 (c) that certain communications be marked "Advertising Material" does not apply to communications sent in response to requests of potential clients or their spokespersons or sponsors. General announcements by lawyers, including changes in personnel or office location, do not constitute communications soliciting professional employment from any person known to be in need of legal services within the meaning of this Rule.]

A solicitation that contains false or misleading information within the meaning of Rule 7.1, that involves coercion, duress or harassment within the meaning of Rule 7.3 (c) (2), or that involves contact with someone who has made known to the lawyer a desire not to be solicited by the lawyer within the meaning of Rule 7.3 (c) (1) is prohibited. 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.

This Rule [is] does not [intended to] 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. 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. [Subsection (i) of this Rule would permit an attorney to participate with an organization which uses personal contact to solicit members for its group or prepaid legal service plan, provided that the personal contact is not undertaken by any lawyer who would be a provider of legal services through the plan.]

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

Subsection [(i)](f) of this Rule permits a lawyer to participate with an organization that uses personal contact to solicit members for its group or prepaid legal service plan, provided that the personal contact is not undertaken by any lawyer who would be a provider of legal services through the plan. The organization must not be owned by or directed (whether as manager or otherwise) by any lawyer or law firm that participates in the plan. For example, subsection [(i)](f) would not permit a lawyer to create an organization controlled directly or indirectly by the lawyer and use the organization for the in-person or telephone solicitation of legal employment of the lawyer through memberships in the plan or otherwise. The communication permitted by these

organizations also must not be directed to a person known to need legal services in a particular matter, but is to be designed to inform potential plan members generally of another means of affordable legal services. Lawyers who participate in a legal service plan must reasonably ensure that the plan sponsors are in compliance with Rules 7.1, 7.2 and 7.3 (b). [See 8.4(a).]

AMENDMENT NOTE: The purpose of the amendments to Rules 7.1–7.5 and to Section 2-28A is to incorporate the 2018 amendments to the American Bar Association's Model Rules of Professional Conduct concerning attorney advertising.

[Rule 7.4. Communication of Fields of Practice

(a) A lawyer may communicate the fact that the lawyer does or does not practice in particular fields of law.

(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.

(c) A lawyer engaged in admiralty practice may use the designation "Admiralty," "Proctor in Admiralty" or a substantially similar designation.

(d) A lawyer shall not state or imply that the lawyer is a specialist in a particular field of law except as provided herein and in Rule 7.4A.

COMMENTARY

This Rule permits a lawyer to indicate fields 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 so to indicate. A lawyer may indicate that the lawyer "concentrates in," "focuses on," or that the practice is "limited to" particular fields of practice as long as the statements are not false or misleading in violation of Rule 7.1. However, the lawyer may not use the terms "specialist," "certified," "board-certified," "expert" or any similar variation, unless the lawyer has been certified in accordance with Rule 7.4A.

Recognition of specialization in patent matters is a matter of long-established policy of the Patent and Trademark Office. Designation of admiralty practice has a long historical tradition associated with maritime commerce and the federal courts.]

AMENDMENT NOTE: The purpose of the amendments to Rules 7.1–7.5 and to Section 2-28A is to incorporate the 2018 amendments to the American Bar Association's Model Rules of Professional Conduct concerning attorney advertising.

Rule 7.4A. Certification as Specialist

(a) [Except as provided in Rule 7.4, a] A lawyer shall not state or imply that he or she is a specialist in a field of law unless the lawyer is currently certified as a specialist in that field of law by a board or other entity which is approved by the Rules Committee of the Superior Court of this state or by an organization accredited by the American Bar Association. Among the criteria to be considered by the Rules Committee in determining upon application whether to approve a board or entity as an agency which may certify lawyers practicing in this state as being specialists, shall be the requirement that the board or entity certify specialists on the basis of published standards and procedures which (1) do not discriminate against any lawyer properly qualified for such certification, (2) provide a reasonable basis for the representation that lawyers so certified possess special competence, and (3) require redetermination of the special qualifications of certified specialists after a period of not more than five years.

(b) Upon certifying a lawyer practicing in this state as being a specialist, the board or entity that certified the lawyer shall notify the Statewide Grievance Committee of the name and juris number of the lawyer, the specialty field in which the lawyer was certified, the date of such certification and the date such certification expires.

(c) A lawyer shall not state that he or she is a certified specialist if the lawyer's certification has terminated, or if the statement is otherwise contrary to the terms of such certification.

(d) Certification as a specialist may not be attributed to a law firm.

(e) Lawyers may be certified as specialists in the following fields of law:

(1) *Administrative law*: The practice of law dealing with states, their political subdivisions, regional and metropolitan authorities and other public entities including, but not limited to, their rights and duties, financing, public housing and urban development, the rights of public employees, election law, school law, sovereign immunity, and constitutional law; practice before federal and state courts and governmental agencies.

(2) *Admiralty*: The practice of law dealing with all matters arising under the Carriage of Goods by Sea Act (COGSA), Harter Act, Jones Act, and federal and state maritime law including, but not limited to, the carriage of goods, collision and other maritime torts, general average, salvage, limitation of liability, ship financing, ship subsidies, the rights of injured sailors and longshoremen; practice before federal and state courts and governmental agencies (including the Federal Maritime Commission).

(3) *Antitrust*: The practice of law dealing with all matters arising under the Sherman Act, Clayton Act, Federal Trade Commission Act, Hart-Scott-Rodino Antitrust Improvements Act and state antitrust statutes including, but not limited to, restraints of trade, unfair competition, monopolization, price discrimination, restrictive practices; practice before federal and state courts and governmental agencies.

(4) *Appellate practice*: The practice of law dealing with all procedural and substantive aspects of civil and criminal matters before federal and state appeals courts including, but not limited to, arguments and the submission of briefs.

(5) *Business bankruptcy*: The practice of law dealing with all aspects of the United States Bankruptcy Code when the debtor was engaged in business before the institution of a Chapter 7, 9, or 11 proceeding. This includes, but is not limited to, business liquidations, business reorganizations, and related adversary and contested proceedings.

(6) *Child welfare law*: The practice of law representing children, parents or the government in all child protection proceedings including emergency, temporary custody, adjudication, disposition, foster care, permanency planning, termination, guardianship, and adoption. Child welfare law does not include representation in private child custody and adoption disputes where the state is not a party.

(7) *Consumer bankruptcy*: The practice of law dealing with all aspects of the United States Bankruptcy Code when the debtor was not engaged in business before the institution of a Chapter 7, 12, or 13 proceeding. This includes, but is not limited to, liquidations, wage earner plans, family farmers and related adversary and contested proceedings.

(8) *Civil rights and discrimination*: The practice of law dealing with all matters arising under federal and state law relating to proper treatment in the areas of, among others, public accommodations, voting, employment, housing, administration of welfare and social security benefits; practice before federal and state courts and governmental agencies.

(9) *Civil trial practice*: The practice of law dealing with representation of parties before federal or state courts in all noncriminal matters.

(10) *Commercial transactions*: The practice of law dealing with all aspects of commercial paper, contracts, sales and financing, including, but not limited to, secured transactions.

(11) *Consumer claims and protection*: The practice of law dealing with all aspects of consumer transactions including, but not limited to, sales practices, credit transactions, secured transactions and warranties; all matters arising under the Equal Credit Opportunity Act, the Fair Credit Reporting Act, the Magnuson-Moss Act, the Truth in Lending Act, state statutes such as the "Little FTC" acts, and other analogous federal and state statutes.

(12) *Corporate and business organizations*: The practice of law dealing with all aspects of the formation, operation and dissolution of corporations, partnerships (general and limited), agency and other forms of business organizations.

(13) *Corporate finance and securities*: The practice of law dealing with all matters arising under the Securities Act of 1933, Securities Exchange Act of 1934, Investment Advisors Act (or the Federal Securities Code, if adopted) and other federal and state securities statutes; financing corporate activities; mergers and acquisitions; practice before the Securities and Exchange Commission and state securities commissions.

(14) *Criminal*: The practice of law dealing with the prosecution or representation of persons accused of crimes at all stages of criminal proceedings in federal or state courts including, but not limited to, the protection of the accused's constitutional rights.

(15) *Elder law*: The practice of law involving the counseling and representation of older persons and their representatives relative to the legal aspects of health and long term care planning and financing; public benefits; alternative living arrangements and attendant residents' rights under state and federal law; special needs counseling; surrogate decision making; decision making capacity; conservatorships; conservation, disposition, and administration of the estates of older persons and the implementation of decisions of older persons and their representatives relative to the foregoing with due consideration to the applicable tax consequences of an action, involving, when appropriate, consultation and collaboration with professionals in related disciplines. Lawyers certified in elder law must be capable of recognizing issues that arise during counseling and representation of older persons or their representatives with respect to the following: Abuse, neglect or exploitation of older persons; estate, trust, and tax planning; other probate matters. Elder law specialists must be capable of recognizing the professional conduct and ethical issues that arise during representation.

(16) *Environmental*: The practice of law dealing with all aspects of the regulation of environmental quality by both federal and state governments; control of air pollution, water pollution, noise pollution, toxic substances, pesticides, and civilian uses of nuclear energy; solid waste/resource recovery; all matters arising under the National Environmental Policy Act, Clean Air Act, Federal Water Pollution Control Act, Noise Control Act, Solid Waste Disposal Act, Toxic Substance Control Act and other federal and state environmental statutes; practice before federal and state courts and governmental agencies.

(17) *Estate planning and probate*: The practice of law dealing with all aspects of the analysis and planning for the conservation and disposition of estates, giving due consideration to the applicable tax consequences, both federal and state; the preparation of legal instruments in order to effectuate estate plans; administering estates, including tax related matters, both federal and state.

(18) *Family and matrimonial*: The practice of law dealing with all aspects of antenuptial and domestic relationships, separation and divorce, alimony and child support, distribution of assets, child custody matters and adoption, giving due consideration to the tax consequences, and court proceedings relating thereto.

(19) *Government contracts and claims*: The practice of law dealing with all aspects of the negotiation and administration of contracts with federal and state governmental agencies.

(20) *Immigration and naturalization*: The practice of law dealing with obtaining and retaining permission to enter and remain in the United States including, but not limited to, such matters as visas, change of status, deportation and naturalization; representation of aliens before courts and governmental agencies; protection of aliens' constitutional rights.

(21) *International*: The practice of law dealing with all aspects of the relations among states, international business transactions, international taxation, customs and trade law and foreign and comparative law.

(22) *Labor*: The practice of law dealing with all aspects of employment relations (public and private) including, but not limited to, unfair labor practices, collective bargaining, contract administration, the rights of individual employees and union members, employment discrimination; all matters arising under the National Labor Relations Act (Wagner Act), Labor Management Relations Act (Taft-Hartley Act), Labor Management Reporting and Disclosure Act (Landrum-Griffin Act), Fair Labor Standards Act, Title VII of The Civil Rights Act of 1964, Occupational Safety and Health Act (OSHA), Employee Retirement Income Security Act (ERISA), other federal statutes and analogous state statutes; practice before the National Labor Relations Board, analogous state boards, federal and state courts, and arbitrators.

(23) *Military*: The practice of law dealing with the presentation of parties before courts-martial and other military tribunals in disputes arising under the Uniform Code of Military Justice; the representation of veterans and their dependents in seeking government benefits due to them on account of military service; handling civil law problems of the military.

(24) *Natural resources*: The practice of law dealing with all aspects of the regulation of natural resources such as coal, oil, gas, minerals, water and public lands; the rights and responsibilities relating to the ownership and exploitation of such natural resources.

(25) *Patent, trademark and copyright*: The practice of law dealing with all aspects of the registration, protection and licensing of patents, trademarks or copyrights; practice before federal and state courts in actions for infringement and other actions; the prosecution of applications before the United States Patent and Trademark Office; counseling with regard to the law of unfair competition as it relates to patents, trademarks and copyrights.

(26) (A) *Residential real estate*: The practice of law dealing with all aspects of real property transactions involving single one-to-four family residential dwellings when the client uses such dwelling or expresses in writing the intent to use such dwelling as the

client's primary or other residence including, but not limited to, real estate conveyances, title searches and property transfers, leases, condominiums, cooperatives, and other common interest communities, planned unit developments, mortgages, condemnation and eminent domain, zoning and land use planning, property taxes, and determination of property rights.

(B) *Commercial real estate*: The practice of law dealing with all aspects of real property transactions except for residential real estate as defined in subparagraph (A) of this subdivision, including, but not limited to, real estate conveyances, title searches and property transfers, leases, condominiums, cooperatives and other common interest communities, planned unit developments, mortgages, condemnation and eminent domain, zoning and land use planning, property taxes, real estate development and financing (with due consideration to tax and securities consequences) and determination of property rights.

(27) *Taxation*: The practice of law dealing with all matters arising under the Internal Revenue Code, Employee Retirement Income Security Act (ERISA), state and local tax laws and foreign tax laws, including counseling with respect thereto; practice before federal and state courts and governmental agencies.

(28) *Workers' compensation*: The practice of law dealing with the representation of parties before federal and state agencies, boards and courts in actions to determine eligibility for workers' compensation, and disability.

AMENDMENT NOTE: The purpose of the amendments to Rules 7.1–7.5 and to Section 2-28A is to incorporate the 2018 amendments to the American Bar Association's Model Rules of Professional Conduct concerning attorney advertising.

[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 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 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.

(d) Lawyers may state or imply that they practice in a partnership or other organization only when that is the fact.

COMMENTARY

A firm may be designated by the names of all or some of its members, by the names of deceased members where there has been a continuing succession in the firm's identity or by a trade name such as the "ABC Legal Clinic." Although the United States Supreme Court has held that legislation may prohibit the use of trade names in professional practice, use of such names in law practice is acceptable so long as it is not misleading. If a private firm uses a trade name that includes a geographical name such as "Springfield Legal Clinic," an express disclaimer that it is a public legal aid agency may be required to avoid a misleading implication. It may be observed that any firm name including the name of a deceased partner is, strictly speaking, a trade name. The use of such names to designate law firms has proven a useful means of identification. However, it is misleading to use the name of a lawyer not associated with the firm or a predecessor of the firm.

With regard to subsection (d), 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.]

AMENDMENT NOTE: The purpose of the amendments to Rules 7.1–7.5 and to Section 2-28A is to incorporate the 2018 amendments to the American Bar Association's Model Rules of Professional Conduct concerning attorney advertising.

Sec. 2-28A. Attorney Advertising; Mandatory Filing

(a) Any attorney who advertises services to the public through any media, electronic or otherwise, or through written or recorded communication pursuant to Rule 7.2 of the Rules of Professional Conduct shall file a copy of each such advertisement or communication with the Statewide Grievance Committee either prior to or concurrently with the attorney's first dissemination of the advertisement or written or recorded communication, except as otherwise provided in subsection (b) herein. The materials shall be filed in a format prescribed by the Statewide Grievance Committee, which may require them to be filed electronically. Any such submission in a foreign language must include an accurate English language translation.

The filing shall consist of the following:

(1) A copy of the advertisement or communication in the form or forms in which it is to be disseminated (e.g., videotapes, DVDs, audiotapes, compact discs, print media, photographs of outdoor advertising);

(2) A transcript, if the advertisement or communication is in video or audio format;

(3) A list of domain names used by the attorney primarily to offer legal services, which shall be updated quarterly;

(4) A sample envelope in which the written communication will be enclosed, if the communication is to be mailed;

(5) A statement listing all media in which the advertisement or communication will appear, the anticipated frequency of use of the advertisement or communication in each medium in which it will appear, and the anticipated time period during which the advertisement or communication will be used.

(b) The filing requirements of subsection (a) do not extend to any of the following materials:

(1) An advertisement in the public media that contains only [the information], in whole or in part, [contained in Rule 7.2 (i) of the Rules of Professional Conduct] the following information, provided the information is not false or misleading;

(A) The name of the lawyer or law firm, a listing of lawyers associated with the firm, office addresses and telephone numbers, office and telephone service hours, fax numbers, website and e-mail addresses and domain names, and a designation such as "attorney" or "law firm";

(B) Date of admission to the Connecticut bar and any other bars and a listing of federal courts and jurisdictions where the lawyer is licensed to practice;

(C) Technical and professional licenses granted by the state or other recognized licensing authorities;

(D) Foreign language ability;

(E) Fields of law in which the lawyer practices or is designated, subject to the requirements of Rule 7.1, or is certified pursuant to Rule 7.4A;

(F) Prepaid or group legal service plans in which the lawyer participates;

(G) Acceptance of credit cards;

(H) Fee for initial consultation and fee schedule; and

(I) A listing of the name and geographic location of a lawyer or law firm as a sponsor of a public service announcement or charitable, civic or community program or event.

(2) An advertisement in a telephone directory;

(3) A listing or entry in a regularly published law list;

(4) An announcement card stating new or changed associations, new offices, or similar changes relating to an attorney or firm, or a tombstone professional card;

(5) A communication sent only to:

(A) Existing or former clients;

(B) Other attorneys or professionals; business organizations including trade groups; not-for-profit organizations; governmental bodies and/or

(C) Members of a not-for-profit organization that meets the following conditions: the primary purposes of the organization do not include the rendition of legal services; the recommending, furnishing, paying for or educating persons regarding legal services is incidental and reasonably related to the primary purposes of the organization; the organization does not derive a financial benefit from the rendition of legal services by an attorney; and the person for whom the legal services are rendered, and not the organization, is recognized as the client of the attorney who is recommended, furnished, or paid for by the organization.

(6) Communication that is requested by a prospective client.

(7) The contents of an attorney's Internet website that appears under any of the domain names submitted pursuant to subdivision (3) of subsection (a).

(c) If requested by the Statewide Grievance Committee, an attorney shall promptly submit information to substantiate statements or representations made or implied in any advertisement in the public media and/or written or recorded communications.

(d) The statewide bar counsel shall review advertisements and communications filed pursuant to this section that have been selected for such review on a random basis. If after such review the statewide bar counsel determines that an advertisement or communication does not comply with the Rules of Professional Conduct, the statewide bar counsel shall in writing advise the attorney responsible for the advertisement or communication of the noncompliance and shall attempt to resolve the matter with such attorney. If the matter is not resolved to the satisfaction of the statewide bar counsel, he or she shall forward the advertisement or communication and a statement describing the attempt to resolve the matter to the Statewide Grievance Committee for review. If, after reviewing the advertisement or communication, the Statewide Grievance Committee determines that it violates the Rules of Professional Conduct, it shall forward a copy of its file to the disciplinary counsel and direct the disciplinary counsel to file a presentment against the attorney in the Superior Court.

(e) The procedure set forth in subsection (d) shall apply only to advertisements and communications that are reviewed as part of the random review process. If an advertisement or communication comes to the attention of the statewide bar counsel other than through that process, it shall be handled pursuant to the grievance procedure that is set forth in Section 2-29 et seq.

(f) The materials required to be filed by this section shall be retained by the Statewide Grievance Committee for a period of one year from the date of their filing, unless, at the expiration of the one year period, there is pending before the Statewide Grievance Committee, a reviewing committee, or the court a proceeding concerning such materials, in which case the materials that are the subject of the proceeding shall be retained until the expiration of the proceeding or for such other period as may be prescribed by the Statewide Grievance Committee.

(g) Except for records filed in court in connection with a presentment brought pursuant to subsection (d), records maintained by the statewide bar counsel, the Statewide Grievance Committee and/ or the Disciplinary Counsel's Office pursuant to this section shall not be public. Nothing in this rule shall prohibit the use or consideration of such records in any subsequent disciplinary or client security fund proceeding and such records shall be available in such proceedings to a judge of the Superior Court or to the standing committee on recommendations for admission to the bar, to disciplinary counsel, to the statewide bar counsel or assistant bar counsel, or, with the consent of the respondent, to any other person, unless otherwise ordered by the court.

(h) Violation of subsections (a) or (c) shall constitute misconduct.

COMMENTARY: The purpose of the amendments to Rules 7.1–7.5 and to Section 2-28A is to incorporate the 2018 amendments to the American Bar Association's Model Rules of Professional Conduct concerning attorney advertising.