

## **Alabama Rules of Professional Conduct**

### **Information About Legal Services**

#### **Rule 7.3.**

##### **Solicitation of Clients.**

(a) A lawyer shall not solicit professional employment through live, in person or real-time communication directed to someone who has not asked the lawyer to contact that person and who the lawyer knows or reasonably should know needs legal services in a matter where a motive for the lawyer contacting the prospective client is the lawyer's pecuniary gain. Such communications, regardless of form, constitute improper solicitation and are subject to these Rules. Communications to another lawyer, former or current client or family member are exceptions to this Rule and are permitted.

(b) A lawyer shall not solicit professional employment, even when not prohibited in 7.3(a), if:

- (1) The communication concerns an action for personal injury or wrongful death arising out of or otherwise related to an accident, event or disaster involving the person to whom the communication is addressed or a relative or representative of that person, unless the accident, event or disaster giving rise to the cause of action occurred more than twenty-one (21) days prior to the communication;
- (2) The communication concerns a civil proceeding pending in a state or federal court or an administrative proceeding other than personal injury or wrongful death, unless service of process was obtained on the person involved in the proceeding or other prospective client and filed with the appropriate court;
- (3) The communication concerns a criminal proceeding pending in a state or federal court, unless the prospective client was served with a warrant or information more than seven (7) days prior to the communication;

- (4) The communication concerns a specific matter, and the lawyer knows or reasonably should know that the person to whom the communication is sent or directed is represented by a lawyer in that matter;
- (5) It has been made known to the lawyer that the person to whom the communication is sent or directed does not want to receive the communication;
- (6) The communication involves coercion, duress, fraud, overreaching, harassment, intimidation, or undue influence by the lawyer;
- (7) The communication contains a false, fraudulent, misleading, deceptive, or unfair statement or claim or is otherwise improper under these Rules; or
- (8) The lawyer knows or reasonably should know that the person to whom the communication is sent or directed is a minor, is incompetent, or that the person's physical, emotional, or mental state makes it unlikely that the person would exercise reasonable judgment in employing a lawyer.

(c) A lawyer shall not permit any person, including intermediaries, representatives, employees, staff or agents of the lawyer, to solicit clients on the lawyer's behalf in violation of these Rules, and the lawyer is responsible for any improper solicitation by the lawyer's or the lawyer's firm's intermediaries, representatives, employees, staff or agents. A lawyer shall not use any person, including intermediaries, non-lawyers, accountants, investigators, police officers, healthcare workers, courthouse personnel, etc., to solicit, seek or obtain prospective clients for the lawyer or to direct clients to the lawyer in violation of these Rules.

(d) A lawyer shall not enter into an agreement for or charge or collect a fee or other compensation for professional employment obtained in violation of Rule 7.3.

(e) Communications covered by Rule 7.3(b) by or on behalf of a lawyer to prospective clients which are not prohibited by these Rules are subject to the following additional requirements:

- (1) A sample of each communication and a sample of any envelope used with any mailed communication, along with a list of names and addresses of the recipients, shall be retained by the lawyer for two (2) years and made available promptly on request to the Office of General Counsel of the Alabama State Bar. If the communication is sent to multiple recipients and it is not reasonably possible for the lawyer to identify specific addresses for the recipients, the lawyer must retain a record sufficient to identify the recipients by group.
- (2) Communications mailed to prospective clients shall not be sent by registered mail, any other form of restricted delivery, express mail, or by any other means that could reasonably mislead the recipient;
- (3) It shall not be stated or implied that the communication is approved by the Alabama State Bar or other authority;
- (4) The communication shall not resemble a legal pleading, official government form or document (administrative, municipal, federal or state), or other legal document, and the design of the communication and manner of delivering the communication shall not make the communication appear to be an official document;
- (5) If a contract for representation accompanies the communication, it must be presented as a sample contract and the top of each page of the contract shall be plainly and conspicuously marked "SAMPLE ONLY". The words "SAMPLE ONLY" shall be in bold ink in a color that contrasts with the background color and in a type size larger than the largest type used in the contract. The words "DO NOT SIGN" shall appear on the client signature line in bold ink in a color that contrasts with the background color and in a type size larger than the largest type used in the contract;

- (6) The first sentence of the communication shall state clearly and prominently: "IF YOU ALREADY HAVE A LAWYER FOR THIS MATTER, PLEASE DISREGARD THIS COMMUNICATION.";
- (7) If the communication is prompted by or is about a specific occurrence (e.g., accident, bankruptcy, divorce, death, arrest, recorded judgment, garnishment), the communication shall disclose, in easily understandable language, how the lawyer obtained that information;
- (8) A communication to a prospective client seeking employment in a specific matter shall not reveal on the envelope, or on the outside of the self-mailing brochure or pamphlet, the nature of the prospective client's legal problem or situation;
- (9) The lawyer sending or making the communication must be able to demonstrate promptly on request by a prospective client or by the Office of General Counsel of the Alabama State Bar that all of the information contained in the communication is truthful and is not misleading; and
- (10) If the matter referenced in the communication probably will be referred to another lawyer in a different law firm, the communication must say that in clear, plain language.

(f) A non-electronically transmitted communication subject to this Rule shall be plainly marked "ADVERTISEMENT" both on the top of its first page and on the face of the envelope or other packaging used to transmit the communication. The word "ADVERTISEMENT" must be in bold print larger than the largest print in the communication and in a color that contrasts with the background color.

(g) An email or other electronically transmitted direct communication subject to the requirements of this Rule must be clearly and prominently designated "ADVERTISEMENT" in the subject portion of the communication and at the beginning of the communication's text in print larger than the largest print in the communication.

(h) An audio or video communication, internet or social media communication, email communication, or a recorded telephone message subject to the requirements of this Rule must clearly and prominently disclose that it is an “ADVERTISEMENT” at the beginning of the communication before any other writing or any other words being spoken.

(i) The first sentence of a targeted direct mail or email solicitation permitted under these Rules must be “ADVERTISEMENT. IF YOU HAVE ALREADY RETAINED A LAWYER FOR THIS MATTER, PLEASE DISREGARD THIS COMMUNICATION” presented clearly and prominently in print larger than the largest print in the communication.

### **Comments**

A prospective client as used in these Rules is someone whom a reasonable lawyer making the communication would consider a potential client, or someone whom the lawyer seeks to represent if given the opportunity. As an example, individuals who watch or hear a lawyer’s commercial or view a billboard or access a lawyer’s website are prospective clients in most instances.

Under Rule 8.5, Rule 7.3 applies to any lawyer or firm who solicits clients in Alabama, even if neither the lawyer nor the members of the lawyer’s firm are admitted to practice in Alabama.

“Solicitation” and “solicit” means a communication from or on behalf of a lawyer or law firm that is directed to a specific person the lawyer knows or reasonably should know probably needs legal services in a particular matter and that offers to provide, or reasonably would be understood as offering to provide, legal services for that matter. General communications, such as billboards, television or radio advertisements, web pages, banner ads, social media posts, blogs, and similar forms of communications which are not directed to a specific individual with a particular legal matter are not considered solicitation under these Rules.

Rule 7.3 does not apply if a prospective client initiates contact with the lawyer without any solicitation by the lawyer or by an agent, representative or other intermediary of the lawyer. A lawyer’s communication does not constitute solicitation under Rule 7.3 if it is in response to a request for information by a prospective client that itself was not the result of any solicitation by the lawyer or

by an agent or representative or other intermediary of the lawyer, or if the communication was automatically generated in response to an internet search.

As used in this Rule, “lawyer” includes the lawyer’s firm.

Even permitted forms of solicitation can violate these Rules if the solicitation contains false or misleading information.

There is a potential for abuse inherent in live, person-to-person, direct or real-time solicitation by a lawyer of a prospective client known to need legal services. These forms of solicitation subject the prospective client to the private importuning of a trained advocate, in a direct interpersonal encounter. A prospective client often feels overwhelmed by the situation giving rise to the need for legal services and may have an impaired capacity for reason, judgment, and protective self-interest. Furthermore, the lawyer seeking to be retained is faced with a conflict stemming from the lawyer’s own interest, which may color the advice and representation offered the vulnerable prospective client.

The situation is fraught with the possibility of undue influence, intimidation, and overreaching. This potential for abuse inherent in direct solicitation of a prospective client justifies some restrictions, particularly since the communications permitted under Rule 7.2 offer an alternative means of communicating necessary information to a person who may be in need of legal services. Advertising makes it possible for a prospective client to be informed about the need for legal services, and about the qualifications of available lawyers and law firms, without subjecting the prospective client to direct personal persuasion that may impair or overwhelm the client’s judgment.

Communications by a lawyer seeking employment by a prospective client that are not real time or in person generally present less potential for abuse or overreaching than in-person real-time solicitation and are therefore not prohibited for most types of legal matters, but are subject to reasonable restrictions, as set forth in these Rules, designed to minimize or preclude abuse and overreaching and to ensure the lawyer’s accountability if abuse should occur. Email communications, for example, are not real-time, person-to-person communications prohibited under Rule 7.3(a), but they still are subject to the other provisions and requirements of these Rules. A communication with a prospective client who initiates the contact by using the chat box or other interactive feature of a lawyer’s website also would not be prohibited solicitation if

the communication complies with the other applicable provisions and requirements of these Rules. In contrast, text communications initiated by or for the lawyer are real-time, person-to-person solicitations and are prohibited under Rule 7.3(a).

This Rule allows targeted mail solicitation of prospective clients in personal injury and wrongful death causes of action or other causes of action that relate to an accident, disaster, death, or injury, subject to the requirements of these Rules, but only if the communication is not made until twenty-one (21) days after the incident. This restriction is reasonably required by the sensitized state of the prospective client, who may be either injured or grieving over the loss of a family member, and by the abuses that experience has shown can exist in this type of solicitation.

This Rule prohibits a lawyer from interfering, or allowing another person to interfere, with another lawyer's current attorney-client relationship in a matter. It is prohibited for a lawyer to obtain legal employment by attempting to convince or persuade the client of a different lawyer in a matter to hire him or her in that same matter or to terminate the client's relationship with the client's current lawyer in that matter, or for the lawyer to allow any other person to do so. This Rule does not prevent a lawyer from seeking future legal work from a client of another lawyer.

This Rule would not prohibit a lawyer from contacting representatives of organizations or groups that may be interested in establishing a group or prepaid legal plan for its 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 that the lawyer or the law firm is willing to offer. This form of communication is not directed to a specific prospective client known to need legal services related to a particular matter. 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 the communications permitted under Rule 7.2.

This Rule does not prohibit communications ordered by a court or by other official tribunal recognized by the Office of General Counsel of the Alabama State Bar.

This Rule does not prohibit a lawyer from referring clients to another lawyer or a non-lawyer professional pursuant to a reciprocal referral agreement if the agreement is not exclusive, the client is fully informed in writing of the existence and nature of the agreement prior to the referral and agrees to the referral, and the referral does not otherwise violate these Rules.

A targeted or direct mail communication is one that is prompted by a specific occurrence. Direct mail or email advertisements sent out generally to the public, such as bulk mailers to a specific zip code, are not targeted communications unless the lawyer knows the recipient(s) has or have a specific legal problem.

Disclosures under 7.3(e)(7) must be reasonably specific. Some non-exhaustive examples: If a lawyer obtained a prospective client's name from a police accident report, any solicitation permitted by these Rules should state that the name was obtained from a "police accident report", rather than a general reference to "public records." If a prospective client's name is obtained from a jail inmate's list or booking log, that should be stated in the communication. If the prospective client's name was obtained from a foreclosure list in a specific newspaper, the appropriate language should state that the lawyer obtained the name from "foreclosure list in [name of newspaper]".

Lawyers are required to know and are assumed to know the content and manner of delivery of any communication by or for the lawyer which is subject to this Rule. Ignorance of or misunderstanding of how the communication was used or disseminated or what was in the communication does not absolve the lawyer of responsibility for the communication unless the lawyer's ignorance or misunderstanding was reasonable.

"Prominently" as used in these Rules means not hidden and not presented in a manner that makes it more difficult for the listener or viewer to hear or see the required information than it is to hear or see the other information in the communication.