

## **Alabama Rules of Professional Conduct**

### **Information About Legal Services**

#### **Rule 7.2.**

##### **Communications Concerning a Lawyer's Services: Specific Rules.**

Subject to the requirements of these Rules, a lawyer may communicate information about that lawyer's services through any lawful media.

A lawyer who communicates with prospective clients concerning legal services shall comply with the following:

(a) A copy of each communication subject to these Rules and a record of the following shall be kept by the lawyer for two (2) years after the communication's dissemination and must be provided promptly to the Office of General Counsel of the Alabama State Bar upon request: (1) the date of the communication; (2) the name and the address, telephone number or email address to which the communication was sent; and (3) the means by which the communication was sent. A failure to retain this information and produce it to the Office of General Counsel promptly upon request is a violation of these Rules.

(b) In a communication subject to these Rules, each owner or partner in the law firm making the communication, and each lawyer who appears in or is identified in the communication, is responsible for the content of the communication and its compliance with these Rules. In addition, upon inquiry the law firm shall designate at least one lawyer to respond to inquiries by the public or the Office of the General Counsel of the Alabama State Bar about the communication.

(c) Any communication subject to these Rules shall clearly and prominently state the location – by city, town or county – of one or more *bona fide* office locations of the lawyer or lawyers who will perform the legal services described in the communication. For the purposes of this Rule, a *bona fide* office is a physical location maintained and used by the lawyer or law firm where the lawyer or law firm expects to furnish substantial legal services on a regular basis. A lawyer who uses a referral service shall ensure that the service discloses the

location of the lawyer's *bona fide* office or registered bar address when a referral is made.

(d) If a lawyer who appears in or is identified in a communication subject to these Rules is not licensed in Alabama, the communication must disclose that fact clearly and prominently.

(e) All disclaimers, disclosures and other statements which these Rules require shall be legible and easy to see and read, if written, and easy to hear and understand, if spoken. If displayed visually, the disclosure, disclaimer or other required statement must be displayed for a sufficient time and in writing large enough to enable a viewer to see and read the disclosure or disclaimer. Spoken disclosures, disclaimers and other required statements shall be spoken at the same cadence and at the same or slower rate of speed, and at least the same volume, as the other spoken content of the communication.

(f) Any disclosure, disclaimer or other statement which these Rules requires shall be made in each language used in the communication to which the disclosure, disclaimer or other required statement relates; provided, however, saying that a particular language is spoken or understood by a lawyer does not require a disclosure or disclaimer in that language.

(g) If specific fees are mentioned in the communication, the lawyer must perform the services at the stated fees. The failure of the lawyer to perform the service at the stated fees shall be *prima facie* evidence of misleading and deceptive practices. The lawyer shall be bound to perform the services for the stated fees for at least thirty (30) days after the date of the last communication referencing the stated fees.

(h) A communication which represents that (1) the charging of a fee is contingent on success, (2) no fee will be charged in the absence of recovery, or (3) the fee will be a percentage of recovery, or similar statement, shall disclose clearly and prominently if the client will be responsible for court costs or other expenses of litigation even if there is no recovery.

(i) 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 usual costs of communications permitted by this Rule; except that no lawyer shall pay for the cost of communication of another lawyer not in the same firm unless (a) the lawyers have agreed to work together and jointly represent clients in the matter referenced in the communication, and (b) the agreement does not violate any other provisions of these Rules;
- (2) pay the usual charges of a not-for-profit lawyer referral service, or not-for-profit legal aid agency or entity recognized as legitimate by the Office of General Counsel;
- (3) pay a sponsorship fee or make a charitable or other non-profit organization contribution which will result in the lawyer being recognized or listed as having sponsored or contributed to the organization;
- (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 referral agreement is not exclusive; and
  - (ii) the client is informed of the existence and nature of the agreement;
- (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.

(j) Communications promising or predicting success or a specific result are prohibited.

(k) A lawyer shall not communicate practice areas in which the lawyer does not currently practice or intend to practice. A lawyer shall not make communications concerning legal services that would cause a reasonable prospective client to believe that the lawyer making the communication would handle the matter for the prospective client if neither the lawyer nor a member of the lawyer's firm normally or probably would handle the matter and instead would refer the matter to a lawyer in a different firm or practice, unless the following is clearly and prominently disclosed:

- (1) "MOST CASES OF THIS TYPE ARE NOT HANDLED BY THIS LAWYER/FIRM BUT ARE REFERRED TO OTHER ATTORNEYS", or, if applicable:
- (2) "MOST CASES OF THIS TYPE ARE REFERRED TO OTHER (LAWYERS)(FIRMS) FOR PRINCIPAL RESPONSIBILITY."

(l) A lawyer shall not state or imply that the lawyer will engage in conduct or tactics that would violate the Rules of Professional Conduct or court rule.

(m) A communication may include a testimonial, subject to the following: (1) the person giving the testimonial about a lawyer or firm must have personal, real and direct legal experience with the lawyer or firm and must have a legitimate basis for what is said; and (2) if the person giving the testimonial has been compensated or given or promised anything of value for giving the testimonial, that fact must be disclosed plainly and prominently.

The lawyer on whose behalf the testimonial is made is responsible for ensuring that the testimonial is accurate and not misleading. Any materially false or misleading statement by the person giving the testimonial constitutes a violation of these Rules by the lawyer unless the lawyer was reasonably unaware of the testimonial or reasonably could not prevent the materially false or misleading statement(s).

(n) If a communication includes a result achieved by a lawyer in a matter, the result must be accompanied by a brief description of the type of case or matter, be objectively verifiable, and the result must be described or presented in a manner that is not misleading. A communication about a result achieved by a lawyer in a matter is misleading if it would probably cause a reasonable person to form an unjustified expectation that the same or similar result probably would be obtained for other clients, or if the communication would probably cause a reasonable person to misunderstand the nature or significance of the result.

(o) A communication containing a result must state the following clearly and prominently: "EVERY CASE IS DIFFERENT, RESULTS MAY VARY".

(p) Communications which include a reenactment or other depiction of an actual event which is not the actual event, or a fictitious event, which a reasonable

prospective client would not understand was not the actual event or was a fictitious event, must state clearly and prominently: “(DRAMATIZATION) (REENACTMENT) -- NOT (THE) (AN) ACTUAL EVENT.”

(q) A lawyer shall not use an authority figure, such as a judge or law enforcement officer, or an actor portraying an authority figure, to endorse or recommend the lawyer or act as a spokesman for or give a testimonial about the lawyer.

(r) A lawyer shall not use an actor or model to portray a client of the lawyer, unless the client portrayal is non-speaking and merely background or is otherwise incidental. A lawyer shall not use an actor to portray a lawyer whose services are being described or promoted.

(s) In any communication by a lawyer purporting to give the public legal advice or information which a reasonable prospective client would not understand was an advertisement, the lawyer shall clearly and prominently disclose during the communication that the communication is an advertisement. For an audio-visual communication, such as television or an internet video, this disclosure must be given orally if the communication includes spoken words, and also in writing at the start of the communication and immediately after any commercial or other interruption. For any radio or other audio presentation, the disclosure must be spoken at the beginning of the communication and after any commercial or other interruption. Call-in television or radio programs, question and answer presentations, interviews, and “infomercials” are examples of the type of communication requiring this disclosure.

(t) A lawyer shall not manipulate or purchase the internet search results or contact information of another lawyer or firm so as to cause a reasonable prospective client mistakenly to contact a lawyer other than the lawyer or firm for whom the prospective client searched.

(u) This Rule does not apply to a communication by or on behalf of a lawyer licensed or admitted in Alabama and aired or disseminated in a jurisdiction other than Alabama if (1) the Alabama lawyer is admitted in the other jurisdiction, (2) the communication complies with the appropriate rules of that jurisdiction, and (3) the communication reasonably is not expected to reach Alabama residents.

(v) Lawyer and law firm websites, social media pages, professional networking websites, etc., are subject to these Rules. A disclosure, disclaimer or other statement required by these Rules shall be placed with the information to which the disclosure, disclaimer or statement applies. Short-form communications such as banner ads do not violate these Rules if the required disclosure is on the first page that appears when the banner ad, etc., is clicked or selected.

(w) Characterizations or depictions of or statements about opposing parties in current or potential litigation must be truthful and not misleading.

(x) Unless covered by an exception, this Rule applies to all forms of communication seeking or offering legal employment.

### **Comments**

“Lawyer” includes the lawyer’s firm.

Under Rule 8.5, Rule 7.2 applies to any lawyer who communicates with prospective clients in Alabama about the lawyer’s legal services, even if neither the lawyer nor the members of the lawyer’s firm are licensed in or admitted to practice in Alabama.

Rule 7.2 no longer requires the use of a general disclaimer for all communications which are subject to the Rule. Rule 7.2 requires specific disclosures and disclaimers for certain types of covered communications.

A “prospective client” is someone whom a reasonable lawyer making the communication would consider a potential client, or someone whom the lawyer actively 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.

A communication to prospective clients about legal services by a lawyer or firm who does not intend that the lawyer or a member of the lawyer’s firm would render the professional services described in the communication is misleading if the communication would cause a reasonable person to believe that the lawyer

making the communication or a member of the lawyer's firm would represent clients in court or otherwise personally handle the referenced matter for clients, unless the disclosure required by these Rules is included in the communication.

The retention, disclaimer and disclosure requirements of Rule 7.2 do not apply to communications that are not motivated by pecuniary gain and contain no representations about the lawyer's services and do not seek or offer legal employment, and the requirements do not apply to sponsorships or donations that are made in the name of the lawyer and contain no representations about the lawyer's services and do not seek or offer legal employment.

The retention, disclosure and disclaimer requirements of Rule 7.2 do not apply to lawyer communications required by law, such as notice during litigation to members or potential members of a judicially-defined class.

A client review of a lawyer or testimonial about a lawyer which the lawyer has not requested, arranged or provided input for and cannot control generally is not subject to the requirements of this Rule. A client review or testimonial on a lawyer's website or in other media, which reasonably can be deleted or removed by the lawyer, must comply with Rule 7.2 and the lawyer is responsible for its content.

Communications about fees and other charges about a lawyer's services shall be clear, accurate and not misleading. For example, if the client will be responsible for some costs even if there is no recovery, the communication "*You pay nothing unless we win*" would be misleading.

It is not required that a communication to prospective clients concerning fees and expenses contain the details that would be in a fee contract with a client, but the communication shall not suggest or indicate a fee arrangement that is not accurate.

Language required by these Rules must be easy to see, hear and understand. Presentation of required language, including disclosures or disclaimers, in a manner that prevents the prospective client from easily seeing, hearing and understanding the information, such as rapid speech or writing that is small or difficult to read, and any other presentation that diminishes or distracts

from the required information being heard, seen and understood, is prohibited by and violates these Rules.

Disclaimers, disclosures and other language required by these Rules must be able to be seen, read, or heard by a normal or typical viewer or listener of that type of communication. For billboards and signs, the language must be large and clear enough to be seen from the typical viewer's perspective—for example, in a vehicle traveling at speed on a road or highway. In an audiovisual format, the written language must be large and clear enough, and visible long enough, for a typical viewer to see it without straining, and to understand it. For an audio communication, the volume and cadence must be sufficient for a typical listener to understand it.

“Objectively verifiable” means able to be proven or substantiated by the lawyer upon request by a prospective client or the Office of General Counsel of the Alabama State Bar.

“Prominently” means presented openly and in a straightforward manner 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.

A deceptive or inherently misleading communication includes but is not limited to a communication that references a former or retired judicial, executive, or legislative branch official currently engaged in the practice of law by a judicial, executive, or legislative branch title, unless the title is placed after the person's name and the communication includes language that makes clear that the title was in the past and is not current or active. For example, a former judge may not state “*Judge Doe (retired)*” or “*Judge Doe, circuit judge.*” She may state “*Jane Doe, former circuit judge*” or “*Jane Doe, retired circuit judge ...*”.

Communication of a case or matter result, including a verdict or settlement, may be misleading even if accurate if it fails to include information about the result that would be necessary for a reasonable person to understand and evaluate the result or if the communication would cause a reasonable person to reach a conclusion about the nature or significance of the result, or the role of the lawyer in obtaining the result, that is materially different than the truth.



A communication about cumulative case or matter results, such as the total amount of money recovered or obtained for clients or total amounts of verdicts or settlements, must comply with the requirements of this Rule as to each individual result contained or included in the cumulative results.

Whether a communication of a past result achieved by a lawyer is misleading depends on the circumstances. Factors which could, depending on all the circumstances, need to be disclosed to prevent the communication from being misleading include that (1) someone other than the lawyer or the lawyer's firm actually achieved the result, (2) the lawyer did not make a legitimate and significant contribution to obtaining the result, (3) the result was a verdict that was not collected, (4) the result was a default judgment, (5) the matter was not contested, (6) the verdict or other result was overturned or reduced on appeal, (7) the result was outside Alabama, etc. The communication as a whole is not misleading if the information provided about the result reasonably and accurately reflects the true circumstances of the result and the skill and abilities of the lawyer in obtaining the result.

Rule 1.6 (Confidentiality of Information) applies to lawyer and law firm communications, including those addressed in this Rule. Nothing in this Rule authorizes or allows a lawyer to disclose a client's confidential information without the client's consent.

A communication presented as a "*medical alert*," "*health alert*," "*public service announcement*" or similar description is false and misleading and is prohibited.

A communication which suggests or implies that those to whom the communication is directed should not follow medical advice they have received or should not seek or continue medical treatment recommended by a healthcare provider is prohibited.

Whether a lawyer causing his or her information to result from a keyword internet search or other type of search or query, whether electronic or by other means, for a different lawyer, is a violation of these Rules depends on the circumstances. If the communication about the lawyer or firm who is causing his

or her information to result from a keyword internet search for a different lawyer is not clearly and prominently labeled or described as an advertisement, or would cause a reasonable prospective client to believe that the lawyer is affiliated with or is the same lawyer the prospective client had searched for, or would cause the prospective client mistakenly to contact a lawyer other than the lawyer or firm searched for, the practice is misleading and violates these Rules.

Lawyers and law firms shall not advertise or practice under a trade name that is false or misleading.

This Rule applies to a press release that is provided to media outlets by a lawyer or law firm, unless (1) the press release is provided to legitimate media outlets that have editorial control, including discretion whether to print any information in the press release, (2) the media outlet is not paid to print information from the press release, and (3) the press release is not a solicitation of clients or for legal employment.

This Rule applies to an announcement of and an invitation to attend a seminar, presentation, talk or similar event sponsored by a lawyer if the announcement or invitation is for or to an event at which the lawyer will offer or seek legal employment or at which the lawyer's services will be promoted. Any disclosure, disclaimer or other statement required by these Rules must be included in the invitation or announcement. The appropriate disclosure, disclaimer, etc., also is required at the event itself. This Rule does not require a disclosure or disclaimer for CLE or other educational presentations and similar communications where the lawyer is not promoting the lawyer's services or seeking legal employment.

A communication about a lawyer providing mediation or arbitration services that provides no information about the lawyer's legal services or qualifications other than that the mediator or arbitrator is a lawyer or member of the Alabama State Bar is not subject to the disclaimer and retention requirements of these Rules. Mediators and arbitrators should contact the Alabama Center for Dispute Resolution for guidance concerning specific rules and advisory ethics opinions which apply to communications by or about mediators and arbitrators.

A lawyer's scholarly article, blog or other strictly educational communication is not subject to the disclosure and retention requirements of this Rule if it does not offer or seek legal employment.

A lawyer's column or article for a newspaper, website or other media which does not offer or seek legal employment is not subject to this Rule's disclosure and retention requirements.

A communication by a lawyer for politicians or political causes that does not offer or seek legal employment is not subject to this Rule. A communication by a lawyer running for political office is not subject to this Rule if it relates to the campaign and does not offer or seek legal employment.

This Rule does not apply to a communication to solicit a birth mother placed by an attorney on behalf of an existing adoption client.

Generally, promotional items such as shirts, pens, coffee mugs, etc., which contain only the lawyer's logo, name and contact information, are not subject to this Rule. Likewise, a sponsorship or acknowledgement of the lawyer which references only the lawyer's name and contact information and does not offer or seek legal employment is not subject to this Rule.

It is false or misleading to indicate that a lawyer is based in a place where the lawyer does not normally practice or where the lawyer does not have a *bona fide* office.

A recognition, award, designation, accolade, etc., referenced in a communication covered by this Rule and not prohibited by Rule 7.1(d) must be presented in a way that would not cause a prospective client to misunderstand the true, actual significance of the recognition, etc. Indicating or implying that the recognition, etc., materially has more significance, is more exclusive, or denotes more skill or achievement than is accurate given the actual, true basis or criteria for receiving the recognition, etc., violates these Rules and is prohibited.

The purpose of the *bona fide* office requirement of this Rule is to provide prospective clients with an accurate understanding of the location of the lawyer's office(s) or, if the lawyer does not practice out of a traditional physical office, the

primary physical location of the lawyer where substantial legal services would be performed. It is a violation of these Rules for a lawyer or a firm to make a false or misleading statement concerning where the lawyer or the lawyer's offices are located or where the lawyer normally practices.

Factors which may be used in determining whether a *bona fide* office exists are whether: (1) the firm's or lawyer's name is on an outside office sign or the building's directory; (2) the location is staffed by employees of the lawyer who answer phone calls from or assist with in-person appointments with prospective clients at that location; (3) the location is staffed by one or more receptionist, secretary, clerk, or paralegal employed by the lawyer on a full-time basis; (4) attorneys furnish legal services from the location in addition to client interviews and conferences; and (5) the location is staffed by at least one firm lawyer on a regular and continuing basis

A lawyer may state that a lawyer is "available for consultation" or "available by appointment" or has a "limited service" or "satellite" office, if that statement is true. A "limited service" or "satellite" office is one which is exclusively controlled by the lawyer or law firm appearing in the communication. The terms "available for consultation" or "available by appointment" refer to all other circumstances or locations where the lawyer may meet with a prospective client.

The following are non-exhaustive examples of statements by a lawyer that may violate the Rule prohibiting predictions or guarantees of success or a specific result: "*I will save your home,*" "*I will get you money for your injuries,*" and "*Come to me and get acquitted of the charges pending against you.*" Statements to the effect that the lawyer or law firm will work to protect the client's rights, protect the client's assets or family, and do not promise a specific legal result in a particular matter may be in compliance with this Rule.

An aspirational statement by a lawyer generally is permissible, such as a statement describing goals for a client that a lawyer or law firm will try to meet. For example, aspirational words such "*goal,*" "*strive,*" "*dedicated,*" "*mission,*" and "*philosophy*" may be appropriate. Similarly, "*If you have been injured through no fault of your own, I am dedicated to the recovery of damages on your behalf*" normally would be permissible.

A general statement by a lawyer describing or discussing a particular law or area of law that is not a promise of a specific legal result or a prediction of success is allowed. For example, *“When the government takes your property through its eminent domain power, the government must provide you with reasonable compensation for your property,”* normally would be permissible.

A statement in a communication covered by these Rules to the effect that, for example, a lawyer is the *“best”* or *“most experienced”* or is *“number one”* or *“most successful”* that cannot be objectively verified or substantiated would violate these Rules.

With short-form electronic/digital lawyer communications, such as banner ads, social media posts, etc., disclosures, disclaimers and other statements required by these Rules may be placed on a link in the communication rather than in the communication itself as long as the link with the required information is accessible by a prospective client with one click or keystroke and the disclosure, disclaimer and other required information is in the first such link in the communication available to the prospective client.

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 how the communication was used or disseminated or what was in the communication does not absolve the lawyer of responsibility for the communication if the ignorance or misunderstanding was not reasonable.

As used in these Rules, disclaimers are a type of disclosure, and the word disclosure(s) includes disclaimer(s).

These Rules impose on each lawyer who is identified or appears in a communication subject to these Rules responsibility for the communication and responsibility for ensuring that the communication complies with and does not violate these Rules, unless the lawyer reasonably was unaware of or could not control the content of the communication. Failure by the firm or lawyer making the communication to designate at least one lawyer to respond to inquiries about the communication by the public or the Office of General Counsel of the Alabama State Bar upon request also violates these Rules.

For a firm's communication about legal services subject to this Rule, a lawyer in the firm who neither appears nor is identified in the communication and is not a partner or owner of the law firm making the communication is not responsible for its content unless the lawyer was aware of the communication, or reasonably should have been aware of it, and reasonably could have prevented the violation of these Rules from occurring.

A communication containing the disclosures and disclaimers required by these Rules can still be false or misleading. The communication will be considered in its entirety in determining whether it complies with these Rules.

A lawyer may not use internet "cookies" or otherwise electronically obtain information about a prospective client who views a lawyer's website or other internet or digital presence unless the lawyer discloses to the prospective client that the client's information is being accessed and the prospective client is given a reasonable opportunity to object and does not object or otherwise consents.

Whether "retargeting" of prospective clients, or directly contacting prospective clients who visit a lawyer's website or other internet site without a request to do so from the prospective client, is a violation of these Rules depends on the circumstances, and any such communication is subject to these Rules.

The website of a lawyer or firm is subject to the disclosure and other requirements of these Rules. Disclosures required by these Rules should be placed with the information in the website which requires the disclosure. For example, a disclosure concerning a testimonial that is available on a link on the website must be on the same page as and with the testimonial. Likewise, a disclosure concerning a past result must be with the past result. The lawyer or firm is required by these Rules to keep a record of each version of the lawyer or firm's website for two (2) years. Changes to the website which do not materially change the substantive content of the website are not required to be preserved.

The intent of these Rules is to balance the benefit to prospective clients from receiving the information supplied by the disclosures with the burden on the lawyer in providing the information. It is not the intent of these Rules to impose unnecessary restrictions and requirements on lawyers. Rather, the intent is to

safeguard prospective users of legal services by ensuring accuracy and truthfulness in lawyer communications and in preventing misleading information and representations in covered communications.