

*2011-08-22-01*

# The Supreme Court of South Carolina

RE: Amendments to the South Carolina Rules of  
Professional Conduct, Rule 407 of the South Carolina  
Appellate Court Rules (SCACR)

## **ORDER**

The South Carolina Bar's Commission on Lawyer Advertising has proposed a comprehensive set of amendments to the South Carolina Rules of Professional Conduct. While we appreciate the time and effort given to this project by the Commission, and its dedication to protecting the public and maintaining the integrity of the legal profession, in light of recent court decisions and our desire to retain some consistency with the pre-2002 or current version of the Model Rules of Professional Conduct as well as the rules of other states, we decline to adopt a majority of the changes proposed by the Commission. However, some of the proposed amendments are necessary and beneficial for purposes of compliance with recent court decisions and for consistency, as previously mentioned. Accordingly, pursuant to Article V, §4 of the South Carolina Constitution, we hereby amend Rules 7.1, 7.2 and 7.3 of the South Carolina Rules of Professional Conduct, Rule 407, SCACR, as follows:

- The term "unfair" is deleted from Rule 7.1;
- The ban on testimonials is deleted from Rule 7.1(d) and replaced with language allowing testimonials under certain conditions;
- Comments [1] and [3] to Rule 7.1 are amended to address the change in the ban on testimonials;
- Rule 7.2(a) is amended to provide that all advertisements shall be predominately informational such that, in both quantity and quality, the communication of factual information rationally related to the need for and selection of a lawyer predominates and the communication includes only a minimal amount of content designed to attract attention to and create interest in the communication. A new Comment [4] has been added to address the amendment to Rule 7.2(a). The remaining Comments have been renumbered;
- Rule 7.2(c)(2), and new Comment [8] to Rule 7.2, are amended to require that the legal service plan or not-for-profit lawyer referral service not be acting in violation of any Rules of Professional Conduct;
- Rule 7.2(f) is deleted and sections (g), (h), and (i) of the rule are re-designated as sections (f), (g), and (h);
- New Comment [6] to Rule 7.2 is amended to state that it is the responsibility of the lawyer who disseminates or causes the dissemination of the advertisement to review it for compliance with the South Carolina Rules of Professional Conduct.
- The requirement that solicitations be filed with the Commission on Lawyer Conduct, together with a \$50 filing fee, is deleted from Rule 7.3(c) and electronic solicitations are added to the types of solicitations for which lawyers must maintain a file;
- Rule 7.3(d)(1) is amended to require that email solicitations be labeled as advertising material in the subject line and at the beginning and end of the message in capital

- letters and prominent type;
- Rule 7.3(d)(2)(A) is amended by adding directories and the advice of others as alternative methods for obtaining information about other lawyers;
  - Rule 7.3(d)(2) and (d)(3) is amended to apply to "solicitations" and "communications," instead of being limited to "written or recorded solicitations"; and
  - Rule 7.3(i) is amended to require a lawyer who reasonably believes a lawyer other than the lawyer whose name or signature appears on the communication will likely be the lawyer who primarily handles the case or matter, or that the case or matter will be referred to another lawyer or law firm, to notify a potential client.

These amendments shall be effective immediately. The rules, as amended, are available at [www.sccourts.org/courtReg](http://www.sccourts.org/courtReg).

IT IS SO ORDERED.

s/Jean H. Toal C.J.

s/Costa M. Pleicones J.

s/Donald W. Beatty J.

s/John W. Kittredge J.

s/Kaye G. Hearn J.

Columbia, South Carolina August 22, 2011

**RULE 7.1: COMMUNICATIONS CONCERNING A  
LAWYER'S SERVICES**

A lawyer shall not make false, misleading, or deceptive, ~~or~~

unfair communications about the lawyer or the lawyer's services. A communication violates this rule if it:

(a) contains a material misrepresentation of fact or law, or omits a fact necessary to make the statement considered as a whole not materially misleading;

(b) is likely to create an unjustified expectation about results the lawyer can achieve, or states or implies that the lawyer can achieve results by means that violate the Rules of Professional Conduct or other law;

(c) compares the lawyer's services with other lawyers' services, unless the comparison can be factually substantiated;

(d) contains a testimonial about, or endorsement of, the lawyer

(1) without identifying the fact that it is a testimonial or endorsement;

(2) for which payment has been made, without disclosing that fact;

(3) which is not made by an actual client, without identifying that fact;

and

(4) which does not clearly and conspicuously state that any result the endorsed lawyer or law firm may achieve on behalf of one client in one matter does not necessarily indicate similar results can be obtained for other clients.

(e) contains a nickname, moniker, or trade name that implies

an ability to obtain results in a matter.

### **Comment**

[1] 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. ~~The prohibition in paragraph (b) of statements that may create "unjustified expectations" and the prohibition in paragraph (d) of testimonials would ordinarily preclude advertisements about results obtained on behalf of a client, such as the amount of a damage award or the lawyer's record in obtaining favorable verdicts, and advertisements containing client endorsements. Such information may create the unjustified expectation that similar results can be obtained for others without reference to the specific factual and legal circumstances.~~

[2] Truthful statements that are misleading 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 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.

[3] An advertisement that truthfully reports a lawyer's achievements on behalf of clients or former clients may be misleading if presented so as to lead a reasonable person to form an unjustified expectation that the same results could be obtained for other clients in similar matters without reference to the specific factual and legal circumstances of each client's case. Similarly, an unsubstantiated comparison

of the lawyer's services or fees with the services or fees of other lawyers may be misleading if presented with such specificity as would lead a reasonable person to conclude that the comparison 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 a prospective client.

For instance, the prohibition in paragraph (b) on statements likely to create "unjustified expectations" may preclude, and the limitations in paragraph (d) on testimonials and endorsements does preclude, advertisements about results obtained on behalf of a client, such as the amount of a damage award or the lawyer's record in obtaining favorable verdicts, unless they state clearly and conspicuously that any result the lawyer or law firm may have achieved on behalf of clients in other matters does not necessarily indicate similar results can be obtained for other clients. Such information may create the unjustified expectation that similar results can be obtained for others without reference to the specific factual and legal circumstances.

[4] Paragraph (e) precludes the use of nicknames, such as the "Heavy Hitter" or "The Strong Arm," that suggest the lawyer or law firm has an ability to obtain favorable results for a client in any matter. A significant possibility exists that such nicknames will be used to mislead the public as to the results that can be obtained or create an unsubstantiated comparison with the services provided by other lawyers. See also Rule 8.4(f)(prohibition against stating or implying an ability to influence improperly a government agency or official or to achieve results by means that violate the Rules of Professional Conduct or other law).

## **RULE 7.2: ADVERTISING**

(a) Subject to the requirements of this Rule and Rules 7.1 and 7.3, a lawyer may advertise services through written, recorded or electronic communication, including public media. All advertisements shall be predominately informational such that, in both quantity and quality, the communication of factual information rationally related to the need for and selection of a lawyer predominates and the communication includes only a minimal amount of content designed to attract attention to and create interest in the communication.

(b) A lawyer is responsible for the content of any advertisement or solicitation placed or disseminated by the lawyer and has a duty to review the advertisement or solicitation prior to its dissemination to reasonably ensure its compliance with the Rules of Professional Conduct. The lawyer shall keep a copy or recording of every advertisement or communication for two (2) years after its last dissemination along with a record of when and where it was disseminated.

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

(1) pay the reasonable costs of advertisements or communications permitted by this Rule;

(2) pay the usual charges of a legal service plan or a not-for-profit lawyer referral service, which is itself not acting in violation of any Rule of Professional Conduct; and

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

(d) Any communication made pursuant to this Rule shall include the name and office address of at least one lawyer responsible for its content.

(e) No lawyer shall, directly or indirectly, pay all or a 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, the relationship between the advertising lawyer and the nonadvertising lawyer, and whether the advertising lawyer may refer any case received through the advertisement to the nonadvertising lawyer.

~~(f) A lawyer shall not make statements in advertisements or written communications which are merely self laudatory or which describe or characterize the quality of the lawyer's services; provided that this provision shall not apply to information furnished to a prospective client at that person's request or to information supplied to existing clients.~~

(gf) Every advertisement that contains information about the lawyer's fee shall disclose whether the client will be liable for any expenses in addition to the fee and, if the fee will be a percentage of the recovery, whether the percentage will be computed before deducting the expenses.

(hg) A lawyer who advertises a specific fee or range of fees for a particular service shall honor the advertised fee or fee range for at least ninety (90) days following dissemination of the advertisement, unless the advertisement specifies a shorter period; provided that a fee advertised in a publication which is issued not more than annually, shall be honored for one (1) year following publication.

(ih) All advertisements shall disclose the geographic



location, by city or town, of the office in which the lawyer or lawyers who will actually perform the services advertised principally practice law. If the office location is outside a city or town, the county in which the office is located must be disclosed. A lawyer referral service shall disclose the geographic area in which the lawyer practices when a referral is made.

### **Comment**

[1] To assist the public in 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.

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

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

Similarly, electronic media, such as the Internet, can be an important source of information about legal services, and lawful communication by electronic mail is permitted by this Rule, but see Rule 7.3(a) for the prohibition against the solicitation of a prospective client through a real time electronic exchange that is not initiated by the prospective client.

[4] Regardless of medium, a lawyer's advertisement should provide only useful, factual information presented in an objective and understandable fashion so as to facilitate a prospective client's ability to make an informed choice about legal representation. A lawyer should strive to communicate such information without the use of techniques intended solely to gain attention and which demonstrate a clear and intentional lack of relevance to the selection of counsel, as such techniques hinder rather than facilitate intelligent selection of counsel. A lawyer's advertisement should reflect the serious purpose of legal services and our judicial system. The state has a significant interest in protecting against a public loss of confidence in the legal system, including its participants, and in protecting specifically

against harm to the jury system that might be caused by lawyer advertising. The effectiveness of the legal system depends upon the public's trust that the legal system will operate with fairness and justice. Public trust is likely to be diminished if the public believes that some participants are able to obtain results through inappropriate methods. Public confidence also is likely to be diminished if the public perceives that the personality of their advocate, rather than the legal merit of their claim, is a key factor in determining the outcome of their matter. It is necessary to ensure that lawyer advertisements do not have these detrimental impacts. This rule is intended to preserve the public's access to information relevant to the selection of counsel, while limiting those advertising methods that are most likely to have a harmful impact on public confidence in the legal system and which are of little or no benefit to the potential client.

[45] 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**

[56] Paragraph (b) imposes upon the lawyer who disseminates an advertisement or causes its dissemination the responsibility for reviewing each advertisement prior to dissemination to ensure its compliance with the Rules of Professional Conduct. It also requires that a record of the content and use of advertising be kept in order to facilitate enforcement of this Rule.

### **Paying Others to Recommend a Lawyer**

[67] Lawyers are not permitted to pay others for channeling

professional work. Paragraph (c)(1), however, allows a lawyer to pay for advertising and communications permitted by this Rule, including the cost of print directory listings, on-line directory listings, newspaper ads, television and radio airtime, domain-name registrations, sponsorship fees, banner ads, 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 and website designers. See Rule 5.3 for the duties of lawyers and law firms with respect to the conduct of nonlawyers who prepare marketing materials for them.

[78] A lawyer may pay the usual charges of a legal service plan or a not for profit lawyer referral service, which is itself not acting in violation of the Rules of Professional Conduct.

A legal service plan is a prepaid or group legal service plan or a similar delivery system that assists prospective clients 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 laypersons 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 lawyer referral service. The “usual charges” may include a portion of legal fees collected by a lawyer from clients referred by the service when that portion of fees is collected to support the expenses projected for the referral service.

[89] 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 prospective clients, 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 prospective clients to think that it was a lawyer referral service sponsored by a state agency or bar association. See also Rule 7.3(b).

### **RULE 7.3: DIRECT CONTACT WITH PROSPECTIVE CLIENTS**

(a) A lawyer shall not by in person, live telephone or real time electronic contact solicit professional employment from a prospective client when a significant motive for the lawyer's doing so is the lawyer's pecuniary gain, unless the person contacted:

(1) is a lawyer; or

(2) has a family, close personal, or prior professional relationship with the lawyer.

(b) A lawyer shall not solicit professional employment from a prospective client by direct written, recorded or electronic communication or by in person, telephone, telegraph, facsimile or realtime electronic contact even when not otherwise prohibited by paragraph (a), if:

(1) the prospective client has made known to the lawyer a

desire not to be solicited by the lawyer;

(2) the solicitation involves coercion, duress, harassment, fraud, overreaching, intimidation or undue influence;

(3) the solicitation concerns an action for personal injury or wrongful death or otherwise relates to an accident or disaster involving the person solicited or a relative of that person unless the accident or disaster occurred more than thirty (30) days prior to the solicitation;

(4) the solicitation concerns a specific matter and the lawyer knows, or reasonably should know, that the person solicited is represented by a lawyer in the matter; or

(5) 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.

~~(c) Every written or recorded communication subject to this Rule, except those directed only to other lawyers, family members, close personal friends, or persons with whom the sender has a prior or existing professional relationship, shall be filed with the Commission on Lawyer Conduct within ten (10) days after any written communication is sent or any recorded communication is made together with a fee of \$50.00. If a written communication is sent or a recorded communication is made generally to persons similarly situated, a representative copy may be filed with a listing of those persons to whom the communication was sent. Any lawyer who uses written, or recorded, or electronic solicitation shall maintain a file for two years showing the following:~~

(1) the basis by which the lawyer knows the person solicited

needs legal services; and

(2) the factual basis for any statements made in the written, or recorded, or electronic communication.

(d) Every written, recorded or electronic communication from a lawyer soliciting professional employment from a prospective client known to be in need of legal services in a particular matter, and with whom the lawyer has no family, close personal or prior professional relationship, shall conform to Rules 7.1 and 7.2 and, in addition, must conform to the following provisions:

(1) The words "ADVERTISING MATERIAL," printed in capital letters and in prominent type, shall appear on the front of the outside envelope and on the front of each page of the material. Every such recorded or electronic communication shall clearly state both at the beginning and at the end that the communication is an advertisement. If the solicitation is made by computer, including, but not limited to, electronic mail, the words "ADVERTISING MATERIAL," printed in capital letters and in prominent type, shall appear in any subject line of the message and at the beginning and end of the communication.

(2) Each ~~written or recorded~~ solicitation must include the following statements:

(A) "You may wish to consult your lawyer or another lawyer instead of me (us). You may obtain information about other lawyers by consulting directories, seeking the advice of others, or the Yellow Pages or by calling the South Carolina Bar Lawyer Referral Service at 799-7100 in Columbia or toll free at 1-800-868-2284. If you have already engaged a lawyer in connection with the legal matter referred to in this

communication, you should direct any questions you have to that lawyer" and

(B) "The exact nature of your legal situation will depend on many facts not known to me (us) at this time. You should understand that the advice and information in this communication is general and that your own situation may vary."

Where the solicitation is written, the above statements must be in a type no smaller than that used in the body of the communication.

(3) Each ~~written or recorded~~ solicitation must include the following statement: "ANY COMPLAINTS ABOUT THIS COMMUNICATION LETTER (OR RECORDING) OR THE REPRESENTATIONS OF ANY LAWYER MAY BE DIRECTED TO THE COMMISSION ON LAWYER CONDUCT, 1015 SUMTER STREET, SUITE 305, COLUMBIA, SOUTH CAROLINA 29201 – TELEPHONE NUMBER 803-734-2037." Where the solicitation is written, this statement must be printed in capital letters and in a size no smaller than that used in the body of the communication.

(e) Written communications mailed to prospective clients shall be sent only by regular U.S. mail, not by registered mail or other forms of restricted or certified delivery.

(f) Written communications mailed to prospective clients shall not be made to resemble legal pleadings or other legal documents.

(g) Any written communication prompted by a specific occurrence involving or affecting the intended recipient of the communication or a family member shall disclose how the lawyer obtained the information prompting the



communication.

(h) A written communication seeking employment by a specific prospective client 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 client's legal problem.

(i) If a lawyer reasonably believes ~~knows~~ that a lawyer other than the lawyer whose name or signature appears on the communication will likely be the lawyer who primarily handles ~~actually handle~~ the case or matter, or that 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 potential client.

(j) Notwithstanding the prohibitions in paragraph (a), a lawyer may participate with a prepaid or group legal service plan operated by an organization not owned or directed by the lawyer that uses in person or telephone contact to solicit memberships or subscriptions for the plan from persons who are not known to need legal services in a particular matter covered by the plan. A lawyer may participate with a prepaid or group legal service plan only if the plan is established in compliance with all statutory and regulatory requirements imposed upon such plans under South Carolina law. Lawyers who participate in a legal service plan must make reasonable efforts to assure that the plan sponsors are in compliance with Rules 7.1, 7.2 and 7.3(b).

## **Comment**

[1] There is a potential for abuse inherent in direct in person or, live telephone or real time electronic contact by a lawyer with a prospective client known to need legal services. These forms of contact between a lawyer and a prospective

client subject the layperson to the private importuning of the trained advocate in a direct interpersonal encounter. The prospective client, 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 being retained immediately. The situation is fraught with the possibility of undue influence, intimidation, and overreaching.

[2] The use of general advertising and written recorded or electronic communications to transmit information from lawyer to prospective client, rather than direct in person live telephone or real time electronic contact, will help to assure 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, misleading, deceptive, or unfair communications, in violation of Rule 7.1. The contents of direct in person live telephone or real time electronic conversations between a lawyer and a prospective client can be disputed and may not be subject to 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.

[3] There is far less likelihood that a lawyer would engage in abusive practices against an individual who is a former client, or with whom the lawyer has a close personal or family 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

when the person contacted is a lawyer. Consequently, the general prohibition in Rule 7.3(a) and the requirements of Rule 7.3(d) are not applicable in those situations. Also, paragraph (a) is not intended to prohibit a lawyer from participating in constitutionally protected activities of public or charitable legal service organizations or bona fide political, social, civic, fraternal, employee or trade organizations whose purposes include providing or recommending legal services to its members or beneficiaries.

[4] But even permitted forms of solicitation can be abused. Thus, any solicitation which contains information which is false, misleading, deceptive or unfair within the meaning of Rule 7.1; which involves coercion, duress, harassment, fraud, overreaching, intimidating or undue influence within the meaning of Rule 7.3(b)(2); which involves contact with a prospective client who has made known to the lawyer a desire not to be solicited by the lawyer within the meaning of Rule 7.3(b)(1); which involves contact with a person the lawyer reasonably should know is represented by another lawyer in the matter; or which involves contact with a prospective client the lawyer reasonably should know is physically, emotionally or mentally incapable of exercising reasonable judgment in choosing a lawyer under Rule 7.3(b)(5) is prohibited. Moreover, if after sending a letter or other communication to a client as permitted by Rule 7.2, the lawyer receives no response, any further effort to communicate with the prospective client may violate the provisions of Rule 7.3(b).

[5] The public views direct solicitation in the immediate wake of an accident as an intrusion on the personal privacy and tranquility of citizens. The 30-day restriction in paragraph (b)(3) is meant to forestall the outrage and irritation with the

legal profession engendered by crass commercial intrusion by attorneys upon a citizen's personal grief in a time of trauma. The rule is limited to a brief period, and lawyer advertising permitted under Rule 7.2 offers alternative means of conveying necessary information about the need for legal services and the qualifications of available lawyers and law firms to those who may be in need of legal services without subjecting the prospective client to direct persuasion that may overwhelm the client's judgment.

[6] This Rule is 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 a prospective client. 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.

[7] The requirement in Rule 7.3(d) 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 a client known to be in need of legal services within the meaning of this Rule.

[8] Requiring communications to be marked as advertisements sent only by regular U.S. mail and prohibiting communications from resembling legal documents is designed to allow the recipient to choose whether or not to read the solicitation without fear or legal repercussions. In addition, the lawyer or law firm should reveal the source of information used to determine that the recipient has a potential legal problem. Disclosure of this information source will help the recipient understand the extent of knowledge the lawyer or law firm has regarding the recipient's particular situation and will avoid misleading the recipient into believing that the lawyer has particularized knowledge about the recipient's matter if the lawyer does not.

[9] Paragraph (j) of this Rule permits a lawyer 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. The organization referred to in paragraph (j) 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, paragraph (j) 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.