27 NCAC 02 RULE 7.3  DIRECT CONTACT WITH POTENTIAL CLIENTS
(a) A lawyer shall not by in-person, live telephone, or real-time electronic contact solicit professional employment 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 potential client by written, recorded or electronic communication or by in-person, telephone or real-time electronic contact even when not otherwise prohibited by paragraph (a), if:
   (1) the target of the solicitation has made known to the lawyer a desire not to be solicited by the lawyer; or
   (2) the solicitation involves coercion, duress, harassment, compulsion, intimidation, or threats.
(c) Targeted Communications. Unless the recipient of the communication is a person specified in paragraphs (a)(1) or (a)(2), every written, recorded, or electronic communication from a lawyer soliciting professional employment from anyone known to be in need of legal services in a particular matter shall include the statement, in capital letters, "THIS IS AN ADVERTISEMENT FOR LEGAL SERVICES" (the advertising notice), which shall be conspicuous and subject to the following requirements:
   (1) Written Communications. Written communications shall be mailed in an envelope. The advertising notice shall be printed on the front of the envelope, in a font that is as large as any other printing on the front or the back of the envelope. If more than one color or type of font is used on the front or the back of the envelope, the font used for the advertising notice shall match in color, type, and size the largest and widest of the fonts. The front of the envelope shall contain no printing other than the name of the lawyer or law firm and return address, the name and address of the recipient, and the advertising notice. The advertising notice shall also be printed at the beginning of the body of the enclosed written communication in a font as large as or larger than any other printing contained in the enclosed written communication. If more than one color or type of font is used on the enclosed written communication, then the font of the advertising notice shall match in color, type, and size the largest and widest of the fonts. Nothing on the envelope or the enclosed written communication shall be more conspicuous than the advertising notice.
   (2) Electronic Communications. The advertising notice shall appear in the "in reference" or subject box of the address or header section of the communication. No other statement shall appear in this block. The advertising notice shall also appear, at the beginning and ending of the electronic communication, in a font as large as or larger than any other printing in the body of the communication or in any masthead on the communication. If more than one color or type of font is used in the electronic communication, then the font of the advertising notice shall match in color, type, and size the largest and widest of the fonts. Nothing in the electronic communication shall be more conspicuous than the advertising notice.
   (3) Recorded Communications. The advertising notice shall be clearly articulated at the beginning and ending of the recorded communication.
(d) Notwithstanding the prohibitions in paragraph (a), a lawyer may participate with a prepaid or group legal service plan subject to the following:
   (1) Definition. A prepaid legal services plan or a group legal services plan ("a plan") is any arrangement by which a person, firm, or corporation, not otherwise authorized to engage in the practice of law, in exchange for any valuable consideration, offers to provide or arranges the provision of legal services that are paid for in advance of any immediate need for the specified legal service ("covered services"). In addition to covered services, a plan may provide specified legal services at fees that are less than what a non-member of the plan would normally pay. The North Carolina legal services offered by a plan must be provided by a licensed lawyer who is not an employee, director or owner of the plan. A prepaid legal services plan does not include the sale of an identified, limited legal service, such as drafting a will, for a fixed, one-time fee.
   (2) Conditions for Participation.
      (A) The plan must be operated by an organization that is not owned or directed by the lawyer;
      (B) The plan must be registered with the North Carolina State Bar and comply with all applicable rules regarding such plans;
      (C) The lawyer must notify the State Bar in writing before participating in a plan and must notify the State Bar no later than 30 days after the lawyer discontinues participation in the plan;
(D) After reasonable investigation, the lawyer must have a good faith belief that the plan is being operated in compliance with the Revised Rules of Professional Conduct and other pertinent rules of the State Bar;

(E) All advertisements by the plan representing that it is registered with the State Bar shall also explain that registration does not constitute approval by the State Bar; and

(F) Notwithstanding the prohibitions in paragraph (a), the plan may use in-person or telephone contact to solicit memberships or subscriptions provided:
   (i) The solicited person is not known to need legal services in a particular matter covered by the plan; and
   (ii) The contact does not involve coercion, duress, or harassment and the communication with the solicited person is not false, deceptive or misleading.

Comment
[1] A solicitation is a 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 lawyer's communication typically does not constitute 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 searches.

[2] There is a potential for abuse when a solicitation involves direct in-person, live telephone, or real-time electronic contact by a lawyer with someone known to need legal services. These forms of contact subject a person to the private importuning of the trained advocate in a direct interpersonal encounter. The person, who may already feel overwhelmed by the circumstances giving rise to the need for legal services, may find it difficult fully to 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 over-reaching.

[3] This potential for abuse inherent in direct in-person, live telephone, or real-time electronic solicitation justifies its prohibition, particularly because 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 email 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 persuasion that may overwhelm a person's judgment.

[4] The use of general advertising and written, recorded or 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 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 and misleading communications, in violation of Rule 7.1. The contents of direct in-person, live telephone, or real-time electronic contact 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.

[5] There is far less likelihood that a lawyer would engage in abusive practices against a former client, or a person 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(c) 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.

[6] But even permitted forms of solicitation can be abused. Thus, any solicitation which contains information which is false or misleading within the meaning of Rule 7.1, which involves coercion, duress, harassment, compulsion, intimidation, or threats within the meaning of Rule 7.3(b)(2), or which 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(b)(1) is prohibited. Moreover, if after sending a letter or other communication as permitted by Rule 7.2 the lawyer receives no response, any further effort to communicate with the recipient of the communication may violate the provisions of Rule 7.3(b).

[7] 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 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 potential 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.

[8] Paragraph (c) of this rule requires that all targeted mail solicitations of potential clients must be mailed in an envelope on which the statement, "This is an advertisement for legal services," appears in capital letters in a font at least as large as any other printing on the front or the back of the envelope. The statement must appear on the front of the envelope with no other distracting extraneous written statements other than the name and address of the recipient and the name and return address of the lawyer or firm. Postcards may not be used for targeted mail solicitations. No embarrassing personal information about the recipient may appear on the back of the envelope. The advertising notice must also appear in the "in reference" or subject box of an electronic communication (email) and at the beginning of any paper or electronic communication in a font that is at least as large as the font used for any other printing in the paper or electronic communication. On any paper or electronic communication required by this rule to contain the advertising notice, the notice must be conspicuous and should not be obscured by other objects or printing or by manipulating fonts. For example, inclusion of a large photograph or graphic image on the communication may diminish the prominence of the advertising notice. Similarly, a font that is narrow or faint may render the advertising notice inconspicuous if the fonts used elsewhere in the communication are chubby or flamboyant. The font size requirement does not apply to a brochure enclosed with the written communication if the written communication contains the required notice. As explained in 2007 Formal Ethics Opinion 15, the font size requirement does not apply to an insignia or border used in connection with a law firm's name if the insignia or border is used consistently by the firm in official communications on behalf of the firm. Nevertheless, any such insignia or border cannot be so large that it detracts from the conspicuousness of the advertising notice. The requirement that certain communications be marked, "This is an advertisement for legal services," 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.

[9] See Rule 7.2, cmt. [5] for the definition of "electronic communication(s)" as used in paragraph (c)(2) of this rule. A lawyer may not send electronic or recorded communications if prohibited by law. See, e.g., N.C. Gen. Stat. §75-104; Telephone Consumer Protection Act 47 U.S.C. §227; and 47 CFR 64. "Real-time electronic contact" as used in paragraph (a) of this rule is distinct from the types of electronic communication identified in Rule 7.2, cmt. [5]. Real-time electronic contact includes, for example, video telephony (e.g., FaceTime) during which a potential client cannot ignore or delay responding to a communication from a lawyer.

[10] Paragraph (d) 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 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 (d) 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 assure that the plan sponsors are in compliance with Rule 7.3(d) as well as Rules 7.1, 7.2 and 7.3(b). See 8.4(a).

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