

COMMUNICATIONS CONCERNING A LAWYER'S SERVICES

A lawyer shall not make a false or misleading communication about the lawyer or the lawyer's services. A communication is false or misleading if it contains a material misrepresentation of fact or law, or omits a fact necessary to make the statement considered as a whole not materially misleading.

[Adopted effective September 1, 1985; Amended effective September 1, 2006.]

Comment

[1] **[Washington revision]** This Rule governs all communications about a lawyer's services. Whatever means are used to make known a lawyer's services, statements about them must be truthful.

[Comment 1 amended effective January 26, 2021.]

[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 the public.

[Comment 3 amended effective September 1, 2016.]

[4] **[Washington revision]** It is professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit or misrepresentation. RPC 8.4(c). See also Rule 8.4(e) for the 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.

[Comment 4 adopted effective September 1, 2006; Amended effective January 26, 2021.]

Additional Washington Comments (5–14)

[5] To assist the public in learning about and obtaining legal services, lawyers should be allowed to make known their services not only through reputation but also through organized information campaigns in the form of advertising. Advertising involves an active quest for clients, contrary to the tradition that a lawyer should not seek clientele. However, the public's need to know about legal services can be fulfilled in part through advertising. This need is particularly acute in the case of persons of moderate means who have not made extensive use of legal services. The interest in expanding public information about legal services ought to prevail over considerations of tradition. Nevertheless, advertising by lawyers entails the risk of practices that are misleading or overreaching.

[6] This rule permits public dissemination of information concerning a lawyer's name or firm name, address, e-mail address, website, and telephone number; the kinds of services the lawyer will undertake; the basis on which the lawyer's fees are determined, including prices for specific services and payment and credit arrangements; 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.

[7] Questions of effectiveness and taste in advertising are matters of speculation and subjective judgment. Some jurisdictions have had extensive prohibitions against television and other forms of advertising, against advertising going beyond specified facts about a lawyer, or against "undignified" advertising. Television, the Internet, and other forms of electronic communication are now among the most powerful media for getting information to the public, particularly persons of low and moderate income; prohibiting television, Internet, and other forms of electronic advertising, therefore, would impede the flow of information about legal services to many sectors of the public. Limiting the information that may be advertised has a similar effect and assumes that the bar can accurately forecast the kind of information that the public would regard as relevant.

Areas of Expertise/Specialization

[8] A lawyer may indicate areas of practice in communications about the lawyer's services. If a lawyer practices only in certain fields, or will not accept matters except in a specified field or fields, the lawyer is permitted to so indicate. A lawyer is generally permitted to state that the lawyer is a "specialist," practices a "specialty," or "specializes in" particular fields, but such communications are subject to the "false and misleading" standard applied in RPC 7.1 to communications concerning a lawyer's services. A lawyer may state that the lawyer is certified as a specialist in a field of law if such certification is granted by an organization approved by an appropriate state authority or accredited by the American Bar Association or another organization, such as a state bar association, that has been approved by the state authority to accredit organizations that certify lawyers as specialists. Certification signifies that an objective entity has recognized an advanced degree of knowledge and experience in the specialty area greater than is suggested by general licensure to practice law. Certifying organizations may be expected to apply standards of experience, knowledge and proficiency to insure that a lawyer's recognition as a specialist is meaningful and reliable. In order to insure that consumers can obtain access to useful information about an organization granting certification, the name of the certifying organization must be included in any communication regarding the certification.

[9] In advertising concerning an LLLT's services, an LLLT is required to communicate the fact that the LLLT has a limited license in the particular fields of law for which the LLLT is licensed and must not state or imply that the LLLT has broader authority to practice than is in fact the case. See LLLT RPC 7.1(b). When lawyers and LLLTs are associated in a firm, lawyers with managerial or pertinent supervisory authority must take measures to assure that the firm's communications conform with these obligations. See Rule 5.10.

Firm Names

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

proven a useful means of identification. However, it is misleading to use the name of a lawyer or LLLT not associated with the firm or a predecessor of the firm, or the name of an individual who is neither a lawyer nor an LLLT.

[11] Lawyers or LLLTs sharing office facilities, but who are not in fact associated with each other in a law firm, may not denominate themselves as, for example, "Smith and Jones," for that title suggests that they are practicing law together in a firm.

[12] When lawyers and LLLTs are associated with each other in a law firm, the firm may be designated using the name of a member LLLT if the name is not otherwise in violation of this rule.

[13] Lawyers or LLLTs practicing out of the same office who are not partners, shareholders of a professional corporation, or members of a professional limited liability company or partnership may not join their names together. Lawyers or LLLTs who are not (1) partners, shareholders of a professional corporation, or members of a professional limited liability company or partnership, or (2) employees of a sole proprietorship, partnership, professional corporation, or members of a professional limited liability company or partnership or other organization, or (3) in the relationship of being "Of Counsel" to a sole proprietorship, partnership, professional corporation, or members of a professional limited liability company or partnership or other organization, must have separate letterheads, cards, and pleading paper, and must sign their names individually at the end of all pleadings and correspondence and not in conjunction with the names of other lawyers or LLLTs.

[14] A law firm with offices in more than one jurisdiction may use the same name or other professional designation in each jurisdiction. See RPC 5.5(f) & cmt. [22]. In order to avoid misleading the public, when lawyers or LLLTs are identified as practicing in a particular office, the firm should indicate the jurisdictional limitations on those not licensed to practice in the jurisdiction where the office is located.