



# The State Bar of California

## Rule 7.2 Advertising

(Rule Approved by the Supreme Court, Effective November 1, 2018)

- (a) Subject to the requirements of rules 7.1 and 7.3, a lawyer may advertise services through any written,\* recorded or electronic means of communication, including public media.
- (b) A lawyer shall not compensate, promise or give anything of value to a person\* for the purpose of recommending or securing the services of the lawyer or the lawyer's law firm,\* 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 services plan or a qualified lawyer referral service. A qualified lawyer referral service is a lawyer referral service established, sponsored and operated in accordance with the State Bar of California's Minimum Standards for a Lawyer Referral Service in California;
  - (3) pay for a law practice in accordance with rule 1.17;
  - (4) refer clients to another lawyer or a nonlawyer professional pursuant to an arrangement not otherwise prohibited under these Rules or the State Bar Act that provides for the other person\* to refer clients or customers to the lawyer, if:
    - (i) the reciprocal referral arrangement is not exclusive; and
    - (ii) the client is informed of the existence and nature of the arrangement;
  - (5) offer or give a gift or gratuity to a person\* having made a recommendation resulting in the employment of the lawyer or the lawyer's law firm,\* provided that the gift or gratuity was not offered or given in consideration of any promise, agreement, or understanding that such a gift or gratuity would be forthcoming or that referrals would be made or encouraged in the future.
- (c) Any communication made pursuant to this rule shall include the name and address of at least one lawyer or law firm\* responsible for its content.

### Comment

[1] This rule permits public dissemination of accurate information concerning a lawyer and the lawyer's services, including for example, the lawyer's name or firm\* name, the lawyer's contact information; 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. This rule, however, prohibits the dissemination of false or misleading information, for example, an advertisement that sets forth a specific fee or range of fees for a particular service where, in fact, the lawyer charges or intends to charge a greater fee than that stated in the advertisement.

[2] Neither this rule nor rule 7.3 prohibits communications authorized by law, such as court-approved class action notices.

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

[3] Paragraph (b)(1) permits a lawyer to 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 supervising the conduct of nonlawyers who prepare marketing materials and provide client development services.

[4] Paragraph (b)(4) permits a lawyer to make referrals to another lawyer or nonlawyer professional, in return for the undertaking of that person\* to refer clients or customers to the lawyer. Such reciprocal referral arrangements must not interfere with the lawyer's professional judgment as to making referrals or as to providing substantive legal services. (See rules 2.1 and 5.4(c).) Conflicts of interest created by arrangements made pursuant to paragraph (b)(4) are governed by rule 1.7. A division of fees between or among lawyers not in the same law firm\* is governed by rule 1.5.1.

**NEW RULES OF PROFESSIONAL CONDUCT 7.2, 7.3, 7.4 & 7.5  
(Former Rule 1-400)  
Advertising and Solicitation**

**EXECUTIVE SUMMARY**

The Commission for the Revision of the Rules of Professional Conduct (“Commission”) evaluated current rule 1-400 (Advertising and Solicitation) in accordance with the Commission Charter, with a focus on the function of the rule as a disciplinary standard, and with the understanding that the rule comments should be included only when necessary to explain a rule and not for providing aspirational guidance. In addition, the Commission considered the national standard of the ABA counterparts to rule 1-400, which comprise a series of rules that are intended to regulate the commercial speech of lawyers: Model Rules 7.1 (Communication Concerning A Lawyer’s Services), 7.2 (Advertising), 7.3 (Solicitation of Clients), 7.4 (Communication of Fields of Practice and Specialization), and 7.5 (Firm Names and Letterheads).

**Rule As Issued For 90-day Public Comment**

The result of the Commission’s evaluation is a three-fold recommendation for implementing:

- (1) The Model Rules’ framework of having separate rules that regulate different aspects of lawyers’ commercial speech:  
  
Proposed rule **7.1** sets out the general prohibition against a lawyer making false and misleading communications concerning the availability of legal services.  
  
Proposed rule **7.2** will specifically address advertising, a subset of communication.  
  
Proposed rule **7.3** will regulate marketing of legal services through direct contact with a potential client either by real-time communication such as delivered in-person or by telephone, or by directly targeting a person known to be in need of specific legal services.  
  
Proposed rule **7.4** will regulate the communication of a lawyer's fields of practice and claims to specialization.  
  
Proposed rule **7.5** will regulate the use of firm names and trade names.
- (2) The retention of the Board’s authority to adopt advertising standards provided for in current rule 1-400(E). Amendments to the Board’s standards, including the repeal of a standard, require only Board action; however, many of the Commission’s changes to the advertising rules themselves are integral to what is being recommended for the Board adopted standards. Although the Commission is recommending the repeal of all of the existing standards, many of the concepts addressed in the standards are retained and relocated to either the black letter or the comments of the proposed rules.
- (3) The elimination of the requirement that a lawyer retain for two years a copy of any advertisement or other communication regarding legal services.

The five proposed rules were adopted by the Commission during its March 31-April 1, 2016 meeting. Following consideration of public comment, a change was made to proposed rule 7.1

and rule 7.1 was circulated for an additional 45-day public comment period. There were no substantive changes made to proposed rules 7.2, 7.3, 7.4, and 7.5. See the Executive Summary for proposed rule 7.1.

**1. Recommendation of the ABA Model Rule Advertising & Solicitation Framework.**

The partitioning of current rule 1-400 into several rules corresponding to Model Rule counterparts is recommended because advertising of legal services and the solicitation of potential clients is an area of lawyer regulation where greater national uniformity would be helpful to the public, practicing lawyers, and the courts. The current widespread use of the Internet by lawyers and law firms to market their services and the trend in most jurisdictions, including California, toward permitting some form of multijurisdictional practice, warrants such national uniformity. In addition, a degree of uniformity should follow from the fact that all jurisdictions are bound by the constitutional commercial speech doctrine when seeking to regulate lawyer advertising and solicitation.

**2. Recommendation to repeal or relocate the current Standards into the black letter or comments of the relevant proposed rule but to retain current rule 1-400(E), which authorizes the Board to promulgate Standards.**

The standards are not necessary to regulate inherently false and deceptive advertising. The Commission reviewed each of the standards and determined that most fell into that category. Further, as presently framed, the presumptions force lawyers to prove a negative. They thus create a lack of predictability with respect to how a particular bar regulator might view a given advertisement. The standards also create a risk of inconsistent enforcement and an unchecked opportunity to improperly regulate "taste" and "professionalism" in the name of "misleading" advertisements. In the absence of deception or illegal activities, regulations concerning the content of advertisements are constitutionally permitted only if they are narrowly drawn to advance a substantial governmental interest. *Central Hudson Gas & Elec. v. Pub. Serv. Comm'n*, 447 U.S. 557 (1980); *Alexander v. Cahill*, 598 F.3d 79 (2d Cir. 2010) (state's ban on "advertising techniques" that are no more than potentially misleading are unconstitutionally broad).

Nevertheless, although the Commission's review led it to conclude that none of the current standards should be retained as standards, it determined that proposed rule 7.1 should carry forward current rule 1-400(E), the standard enabling provision, in the event future developments in communications or law practice might warrant the promulgation of standard to regulate lawyer conduct.

**3. Recommendation to eliminate the record-keeping requirement.** Following the lead of most jurisdictions in the country and the ABA itself, the Commission recommends eliminating the two-year record-keeping requirement in current rule 1-400(F). The ABA Ethics 2000 Commission explained the rationale for the deletion of the requirement, which had appeared in Model Rule 7.2:

"The requirement that a lawyer retain copies of all advertisements for two years has become increasingly burdensome, and such records are seldom used for disciplinary purposes. Thus the Commission, with the concurrence of the ABA Commission on Responsibility in Client Development, is recommending elimination of the requirement that records of advertising be retained for two years." (See ABA Reporter's Explanation of Changes, rule 7.2(b).)

The Commission also notes that because a "web page" is an electronic communication, (see State Bar Formal Ethics Op. 2001-155), it would be extraordinarily burdensome to require a

lawyer to retain copies of each web page given how often the information on web pages are changed, and how often web pages are deleted. Nevertheless, the Commission also notes that even with the deletion of the requirement in rule 1-400(F), a one-year retention requirement would remain in Business and Professions Code section 6159.1.

A description of each of the proposed rules follows.

### **Rule 7.2 (Advertising)**

As noted, proposed rule 7.2 would specifically address advertising, a subset of communication.

Paragraph (a), derived from Model Rule 7.2(a) as modified, permits lawyers to advertise to the general public their services through any written, recorded or electronic media, provided the advertisement does not violate proposed rule 7.1 (prohibition on false or misleading communications) or 7.3 (prohibition on in-person, live telephone or real-time electronic communications). The addition to Model Rule 7.2(a) language of the terms “any” and “means of” are intended to signal that the different modes of communication listed (written, recorded and electronic) are expansive and not limited to currently existing technologies.

Paragraph (b) prohibits a lawyer from paying a person for recommending the lawyer’s services except in the enumerated circumstances set forth in subparagraphs (b)(1) through (b)(5). Subparagraph (b)(1) carries forward current rule 1-320’s Discussion paragraph, which does not “preclude compensation to the communications media in exchange for advertising the member’s or law firm’s availability for professional employment.” The term “reasonable” was added to modify “costs” to ensure such advertising costs do not amount to impermissible fee sharing with a nonlawyer. Subparagraph (b)(2) clarifies that payment of “usual charges” to a qualified lawyer referral service is not the impermissible sharing of fees with a nonlawyer. Subparagraph (b)(3) carries forward the exception in current rule 2-200(B). Subparagraph (b)(4) has no counterpart in the California rules. However, permitting reciprocal referral arrangements recognizes a common mechanism by which clients are paired with lawyers or nonlawyer professionals. Because these arrangements are permitted only so long as they are not exclusive and the client is made aware of them, public protection is preserved. Subparagraph (b)(5) carries forward the substance of the second sentence of current rules 2-200(B) and 3-120(B), which permit such gifts to lawyers and nonlawyers, respectively.

Paragraph (c), derived from Model Rule 7.2(c), as modified, requires the name and address of at least one lawyer responsible for the advertisement’s content. It carries forward the concept in current Standard No. 12.

There are four comments that provide interpretative guidance or clarify how the rule should be applied. Comment [1] provides interpretive guidance on the kinds of information that would generally not be false or misleading by providing a non-exhaustive list of permissible information. The comment’s last sentence carries forward the substance of rule 1-400, Standard No. 16 regarding misleading fee information. Comment [2] clarifies that neither rule 7.2 nor 7.3 [Solicitation of Clients] prohibits court-approved class action notices, a common form of communication with respect to the provision of legal services. Comment [3] provides interpretive guidance by clarifying that a lawyer may not only compensate media outlets that publish or air the lawyer’s advertisements, but also may retain and compensate employees or outside contractors to assist in the marketing the lawyer’s services, subject to proposed rule 5.3 (Responsibilities Regarding Nonlawyer Assistants). Comment [4] clarifies how the rule should be applied to reciprocal referral arrangements, as permitted under subparagraph (b)(4), specifically

focusing on the concept that such arrangements must not compromise a lawyer's independent professional judgment.

### **Rule 7.3 (Solicitation of Clients)**

As noted, proposed rule 7.3 would regulate marketing of legal services through direct contact with a potential client either by real-time communication such as delivered in-person or by telephone, or by directly targeting a person known to be in need of specific legal services through other means, e.g., letter, email, text, etc. It carries forward concepts that are found in current rule 1-400(B), (C), (D)(5) and Standard Nos. 3, 4, and 5.

Paragraph (a), derived from Model Rule 7.3(a), carries forward the concept of current rule 1-400(C), which contains the basic prohibition against what is traditionally understood to constitute improper "solicitation" of legal business by a lawyer engaging in real-time communication with potential clients. The concern is the ability of lawyers to employ their "skills in the persuasive arts" to overreach and convince a person in need of legal services to retain the lawyer without the person having had time to reflect on this important decision. The provision thus eliminates the opportunity for a lawyer to engage in real-time (i.e., contemporaneous and interactive) communication with a potential client. The term "real-time electronic contact" has been added from Model Rule 7.3 because the same concerns regarding in-person or live telephone communications applies to real-time electronic contact such as communications in a chat room or by instant messaging. The two exceptions to such solicitations are included because there is significantly less concern of overreaching when the solicitation target is another lawyer or has an existing relationship with the soliciting lawyer.

Paragraph (b), derived from Model Rule 7.3(b), is a codification of *Shapiro v. Kentucky Bar Ass'n* (1988) 486 U.S. 466, in which the Supreme Court held that a state could not absolutely prohibit direct targeted mailings. The provision, however, recognizes that there are circumstances under which even any kind of communication with a client, including those permitted under rule 7.2, should be prohibited. Such circumstances include when the person being solicited has made known to the lawyer a desire not to be contacted or when the solicitation by the lawyer "is transmitted in any manner which involves intrusion, coercion, duress or harassment." The latter situation largely carries forward the prohibition in current rule 1-400(D)(5). The Commission, however, determined that additional language in the latter provision, i.e., "compulsion," "intimidation," "threats" and "vexatious conduct," are subsumed in the four recommended terms: "intrusion, coercion, duress and harassment."

Paragraph (c), derived from Model Rule 7.3(c), largely carries forward current rule 1-400, Standard No. 5, and requires that every written, recorded or electronic communication from a lawyer seeking professional employment from a person known to be in need of legal services in a particular matter, i.e., direct targeted communications, must include the words "Advertising Material" or words of similar import. The provision is intended to avoid members of the public being misled into believing that a lawyer's solicitation is an official document that requires their response.

Paragraph (d), derived from Model Rule 7.3(d), would permit a lawyer to participate in a pre-paid or group legal service plan even if the plan engages in real-time solicitation to recruit members. Such plans hold promise for improving access to justice. Further, unlike a lawyer's solicitation of a potential client for a particular matter where there exists a substantial concern for overreaching by the lawyer, there is little if any concern if the plan itself engages in in-person, live telephone or real-time electronic contact to solicit memberships in the plan.

Paragraph (e), derived in part from Model Rule 7.3, cmt. [1], has been added to the black letter to clarify that a solicitation covered by this rule: (i) can be oral, (paragraph (a)) or written (paragraph (b)); and (ii) is a communication initiated by or on behalf of the lawyer. The first point is important because the traditional concept of a “solicitation” is of a “live” oral communication in-person or by phone. The second point is an important reminder that a lawyer cannot avoid the application of the rule by acting through a surrogate, e.g., runner or capper.

There are four comments that provide interpretative guidance or clarify how the rule should be applied. Comment [1] clarifies that a communication to the general public or in response to an inquiry is not a solicitation. Comment [2] provides an important clarification that a lawyer acting pro bono on behalf of a bona fide public or charitable legal services organization is not precluded under paragraph (a) from real-time solicitation of a potential plaintiff with standing to challenge an unfair law, e.g., school desegregation laws. This clarification can contribute to access to justice by alerting lawyers that real-time solicitations under conditions present in the cited Supreme Court opinion, *In re Primus*, are not prohibited. Comment [3] clarifies the application of paragraph (d). Comment [4] clarifies that regardless of whether the lawyer is providing services under the auspices of a permitted legal services plan, the lawyer must comply with the cited rules.

**Savings Clause.** In addition to the foregoing recommended adoptions, the Commission recommends the deletion of the savings clause in current rule 1-400(C) (“unless the solicitation is protected from abridgment by the Constitution of the United States or by the Constitution of the State of California.”) The clause was added to the original California advertising rule in 1978 following the Supreme Court’s decision in *Bates v. State Bar of Arizona*, when it was uncertain the extent to which limitations placed on lawyer commercial speech could survive Constitutional challenge. The clause’s continued vitality is questionable at best. Through its decisions in the decades since *Bates*, the Supreme Court has repeatedly held that a state’s regulation of a lawyer’s initiation of in-person or telephonic contact with a member of the public does not violate the First Amendment. The Commission concluded that the clause is no longer necessary.

**Current Rule 1-400(B)(2)(b).** The Commission also recommends the deletion of current rule 1-400(B)(2)(b), which includes in that rule’s definition of “solicitation” a communication delivered in person or by telephone that is “(b) directed by any means to a person known to the sender to be represented by counsel in a matter which is a subject of the communication.” In recommending its deletion, the Commission reasoned that although the conduct described in 1-400(B)(2)(b) might give rise to a civil remedy for tortious interference with a contractual relationship, the provision does not belong in a disciplinary rule. Moreover, there are potential First Amendment issues with retaining this prohibition.

#### **Rule 7.4 (Communication of Fields of Practice and Specialization)**

As noted, proposed rule 7.4 would regulate the communication of a lawyer's fields of practice and claims to specialization. It carries forward concepts that are found in current rule 1-400(D)(6).

Paragraph (a), derived from Model Rule 7.4(d), as modified, states the general prohibition against a lawyer claiming to be a “certified specialist” unless the lawyer has been so certified by the Board of Legal Specialization or any accrediting entity designated by the Board. Placing this provision first is a departure from the Model Rule paragraph order. However, in conformance with the general style format for disciplinary rules, the Commission concluded that this

prohibitory provision should come first, followed by paragraph (b), which identifies statements a lawyer is permitted to make regarding limitations on the lawyer's practice.

Paragraph (b), derived from Model Rule 7.4(a), permits a lawyer to communicate that the lawyer does or does not practice in particular fields of law. A sentence has been added that provides a lawyer may engage in a common practice among lawyers who market their availability by communicating that the lawyer's practice specializes in, is limited to, or is concentrated in a particular field of law.

The Commission does not believe any comments are necessary to clarify the black letter of the proposed rule.

**Recommended rejections of Model Rule provisions.** The Commission does not recommend adoption of Model Rule 7.4(b) or (c), both of which are statements regarding practice limitations or specializations that have been traditionally recognized (patent law in MR 7.4(b) and admiralty law in MR 7.4(c)), but which come within the more general permissive language of proposed paragraph (b).

### **Rule 7.5 (Firm Names and Trade Names)**

As noted, proposed rule 7.5 will regulate the use of firm names and trade names. It carries forward concepts in current rule 1-400(A), which identifies the kinds of communications the rule is intended to regulate, and Standard Nos. 6 through 9.

Paragraph (a) sets forth the general prohibition by clarifying that any use of a firm name, trade name or other professional designation is a "communication" within the meaning of proposed rule 7.1(a) and, therefore must not be false or misleading. The Commission, however, recommends departing from both current rule 1-400 and Model Rule 7.5 by eliminating the term "letterhead," which is merely a subset of "professional designation" and has largely been supplanted by email signature blocks. (See also discussion re the single comment to this rule.

Paragraph (b), derived from the second sentence of Model Rule 7.5(a), as modified to be prohibitory rather than permissive, carries forward the concept in Standard No. 6 regarding communications that state or imply a relationship between a lawyer and a government agency.<sup>1</sup>

Paragraph (c), derived from Model Rule 7.5(d), as modified to be prohibitory rather than permissive, carries forward the concepts in Standard Nos. 7 and 8 that prohibit communications that state or imply a relationship between a lawyer and a law firm or other organization unless such a relationship exists.<sup>2</sup>

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<sup>1</sup> Standard No. 6 provides the following is a presumed violation of rule 1-400:

(6) A "communication" in the form of a firm name, trade name, fictitious name, or other professional designation which states or implies a relationship between any member in private practice and a government agency or instrumentality or a public or non-profit legal services organization.

<sup>2</sup> Standard Nos. 7 and 8 provide the following are presumed violations of rule 1-400:

(7) A "communication" in the form of a firm name, trade name, fictitious name, or other professional designation which states or implies that a member has a relationship to any other lawyer or law firm as a partner or associate, or officer or shareholder pursuant to Business and Professions Code sections 6160-6172 unless such relationship in fact exists.



There is a single comment that provides an explanation of the scope of the term, “other professional designation,” which includes not only traditional letterheads but also more recent law marketing innovations such as logos, URLs and signature blocks.

### **Post-Public Comment Revisions**

After consideration of comments received in response to the initial 90-day public comment period, the Commission made non-substantive stylistic edits to proposed rule 7.2 and voted to recommend that the Board adopt the proposed rule.

After consideration of comments received in response to the initial 90-day public comment period, the Commission made no changes to proposed rules 7.3, 7.4, and 7.5. The commission voted to recommend that the Board adopt the proposed rule.

The Board adopted proposed rules 7.2, 7.3, 7.4, and 7.5 at its November 17, 2016 meeting.

### **Supreme Court Action (May 10, 2018)**

The Supreme Court approved rule 7.2 as modified by the Court to be effective November 1, 2018. In paragraph (b) and subparagraph (b)(5), the phrase “or entity” was deleted. (See also the Court’s modifications to the definition of “person” in rule 1.0.1(g-1).) The Court approved rules 7.3, 7.4 and 7.5 as submitted by the State Bar to be effective November 1, 2018. In rule 7.3, omitted asterisks were added by the Court.

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(8) A “communication” which states or implies that a member or law firm is “of counsel” to another lawyer or a law firm unless the former has a relationship with the latter (other than as a partner or associate, or officer or shareholder pursuant to Business and Professions Code sections 6160-6172) which is close, personal, continuous, and regular.

Current CA Rule 1-400 Advertising Standard	Text of Current CA Rule 1-400 Advertising Standard	Retained/ Repealed/ Relocated <sup>1</sup>	New Location, If Any
(1)	A “communication” which contains guarantees, warranties, or predictions regarding the result of the representation.	Relocated	Rule 7.1 Comment [2]
(2)	A “communication” which contains testimonials about or endorsements of a member unless such communication also contains an express disclaimer such as “this testimonial or endorsement does not constitute a guarantee, warranty, or prediction regarding the outcome of your legal matter.”	Relocated	Rule 7.1 Comment [4]
(3)	A “communication” which is delivered to a potential client whom the member knows or should reasonably know is in such a physical, emotional, or mental state that he or she would not be expected to exercise reasonable judgment as to the retention of counsel.	Repealed	(But see Rule 7.3(b)(2))
(4)	A “communication” which is transmitted at the scene of an accident or at or en route to a hospital, emergency care center, or other health care facility.	Repealed	(Compare B&P § 6152(a)(1) re running/capping)
(5)	A “communication,” except professional announcements, seeking professional employment for pecuniary gain, which is transmitted by mail or equivalent means which does not bear the word “Advertisement,” “Newsletter” or words of similar import in 12 point print on the first page. If such communication, including firm brochures, newsletters, recent legal development advisories, and similar materials, is transmitted in an envelope, the envelope shall bear the word “Advertisement,” “Newsletter” or words of similar import on the outside thereof.	Relocated	Rule 7.3(c)
(6)	A “communication” in the form of a firm name, trade name, fictitious name, or other professional designation which states or implies a relationship between any member in private practice and a government agency or instrumentality or a public or non-profit legal services organization.	Relocated	Rule 7.5(b)

<sup>1</sup> **Retained** – The current Standard has been retained as a Standard in proposed Rule 7.1.  
**Repealed** – The current Standard has been repealed.  
**Relocated** – The substance of the current Standard has been modified and moved to either the black letter text of a proposed rule or to a “Comment” to a proposed rule.

Current CA Rule 1-400 Advertising Standard	Text of Current CA Rule 1-400 Advertising Standard	Retained/ Repealed/ Relocated <sup>1</sup>	New Location, If Any
(7)	A “communication” in the form of a firm name, trade name, fictitious name, or other professional designation which states or implies that a member has a relationship to any other lawyer or a law firm as a partner or associate, or officer or shareholder pursuant to Business and Professions Code sections 6160-6172 unless such relationship in fact exists.	Relocated	Rule 7.5(c)
(8)	A “communication” which states or implies that a member or law firm is “of counsel” to another lawyer or a law firm unless the former has a relationship with the latter (other than as a partner or associate, or officer or shareholder pursuant to Business and Professions Code sections 6160-6172) which is close, personal, continuous, and regular.	Repealed	(Compare Rule 7.5(c) although that provision does not refer to “of counsel”)  See also, Rule 1.0.1 [Terminology] Comment [2] which incorporates a similar definition
(9)	A “communication” in the form of a firm name, trade name, fictitious name, or other professional designation used by a member or law firm in private practice which differs materially from any other such designation used by such member or law firm at the same time in the same community.	Repealed	(But see Rule 7.5(a) stating that such names must comply with Rule 7.1, prohibiting false or misleading communications)
(10)	A “communication” which implies that the member or law firm is participating in a lawyer referral service which has been certified by the State Bar of California or as having satisfied the Minimum Standards for Lawyer Referral Services in California, when that is not the case.	Repealed	(But see Rule 7.1(a) for the general prohibition against any false or misleading content)
(11)	(Repealed. See rule 1-400(D)(6) for the operative language on this subject.)	Repealed	(Note: substance of Rule 1-400(D)(6) found in Rule 7.4(a))

Current CA Rule 1-400 Advertising Standard	Text of Current CA Rule 1-400 Advertising Standard	Retained/ Repealed/ Relocated <sup>1</sup>	New Location, If Any
(12)	A “communication,” except professional announcements, in the form of an advertisement primarily directed to seeking professional employment primarily for pecuniary gain transmitted to the general public or any substantial portion thereof by mail or equivalent means or by means of television, radio, newspaper, magazine or other form of commercial mass media which does not state the name of the member responsible for the communication. When the communication is made on behalf of a law firm, the communication shall state the name of at least one member responsible for it.	Relocated	Rule 7.2(c)  (Note: unlike Stnd. No. 12, a name of a lawyer is not required if a name of a law firm is provided)
(13)	A “communication” which contains a dramatization unless such communication contains a disclaimer which states “this is a dramatization” or words of similar import.	Repealed	(Compare B&P § 6157.2(c) re impersonations, dramatizations, & spokespersons)
(14)	A “communication” which states or implies “no fee without recovery” unless such communication also expressly discloses whether or not the client will be liable for costs.	Relocated	Rule 7.1 Comment [3]
(15)	A “communication” which states or implies that a member is able to provide legal services in a language other than English unless the member can actually provide legal services in such language or the communication also states in the language of the communication (a) the employment title of the person who speaks such language and (b) that the person is not a member of the State Bar of California, if that is the case.	Alternatives:  Option 1 = Relocated <hr/> Option 2 = Retained	Option 1  Rule 7.1 Comment [5] <hr/> Option 2  Rule 7.1 Standard

Current CA Rule 1-400 Advertising Standard	Text of Current CA Rule 1-400 Advertising Standard	Retained/ Repealed/ Relocated <sup>1</sup>	New Location, If Any
(16)	An unsolicited “communication” transmitted to the general public or any substantial portion thereof primarily directed to seeking professional employment primarily for pecuniary gain which sets forth a specific fee or range of fees for a particular service where, in fact, the member charges a greater fee than advertised in such communication within a period of 90 days following dissemination of such communication, unless such communication expressly specifies a shorter period of time regarding the advertised fee. Where the communication is published in the classified or “yellow pages” section of telephone, business or legal directories or in other media not published more frequently than once a year, the member shall conform to the advertised fee for a period of one year from initial publication, unless such communication expressly specifies a shorter period of time regarding the advertised fee.	Relocated	Rule 7.2 Comment [1]

**Rule 7.2 Advertising  
(Redline Comparison to the ABA Model Rule)**

- (a) Subject to the requirements of ~~Rules~~rules 7.1 and 7.3, a lawyer may advertise services through any written,<sup>\*</sup> recorded or electronic means of communication, including public media.
- (b) A lawyer shall not compensate, promise or give anything of value to a person<sup>\*</sup> for the purpose of recommending or securing the services of the lawyer or the lawyer's ~~services~~law firm,<sup>\*</sup> except that a lawyer may:
- (1) pay the reasonable<sup>\*</sup> costs of advertisements or communications permitted by this ~~Rule~~rule;
  - (2) pay the usual charges of a legal ~~services~~services plan or a ~~not-for-profit or~~ qualified lawyer referral service. A qualified lawyer referral service is a lawyer referral service ~~that has been approved by an appropriate regulatory authority~~established, sponsored and operated in accordance with the State Bar of California's Minimum Standards for a Lawyer Referral Service in California;
  - (3) pay for a law practice in accordance with ~~Rule~~rule 1.17;~~and~~
  - (4) refer clients to another lawyer or a nonlawyer professional pursuant to an ~~agreement~~arrangement not otherwise prohibited under these Rules or the State Bar Act that provides for the other person<sup>\*</sup> to refer clients or customers to the lawyer, if:
    - (i) the reciprocal referral ~~agreement~~arrangement is not exclusive;~~;~~ and
    - (ii) the client is informed of the existence and nature of the ~~agreement~~arrangement;
  - (5) offer or give a gift or gratuity to a person\* having made a recommendation resulting in the employment of the lawyer or the lawyer's law firm,\* provided that the gift or gratuity was not offered or given in consideration of any promise, agreement, or understanding that such a gift or gratuity would be forthcoming or that referrals would be made or encouraged in the future.
- (c) Any communication made pursuant to this rule shall include the name and ~~office~~ address of at least one lawyer or law firm<sup>\*</sup> responsible for its content.

**Comment**

~~[1] 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.~~

[21] This ~~Rule~~rule permits public dissemination of accurate information concerning a lawyer and the lawyer's services, including for example, the lawyer's name or firm,\* name, address, email address, website, and telephone number~~the lawyer's contact information~~; 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. This rule, however, prohibits the dissemination of false or misleading information, for example, an advertisement that sets forth a specific fee or range of fees for a particular service where, in fact, the lawyer charges or intends to charge a greater fee than that stated in the advertisement.

~~[3] 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. But see Rule 7.3(a) for the prohibition against a solicitation through a real-time electronic exchange initiated by the lawyer.~~

[42] Neither this ~~Rule~~rule nor ~~Rule~~rule 7.3 prohibits communications authorized by law, such as ~~notice to members of a class in~~court-approved class action ~~litigation~~notices.

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

[3] Paragraph (b)(1) permits a lawyer to 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 supervising the conduct of nonlawyers who prepare marketing materials and provide client development services.

~~[5] Except as permitted under paragraphs (b)(1)-(b)(4), lawyers are not permitted to pay others for recommending the lawyer's services or for channeling professional work~~

~~in a manner that violates Rule 7.3. A communication contains a recommendation if it endorses or vouches for a lawyer's credentials, abilities, competence, character, or other professional qualities. Paragraph (b)(1), however, allows a lawyer to pay for advertising and communications permitted by this Rule, including the costs of print directory listings, on-line directory listings, newspaper ads, television and radio airtime, domain-name registrations, sponsorship fees, Internet-based advertisements, 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. Moreover, a lawyer may pay others for generating client leads, such as Internet-based client leads, as long as the lead generator does not recommend the lawyer, any payment to the lead generator is consistent with Rules 1.5(e) (division of fees) and 5.4 (professional independence of the lawyer), and the lead generator's communications are consistent with Rule 7.1 (communications concerning a lawyer's services). To comply with Rule 7.1, a lawyer must not pay a lead generator that states, implies, or creates a reasonable impression that it is recommending the lawyer, is making the referral without payment from the lawyer, or has analyzed a person's legal problems when determining which lawyer should receive the referral. See also Rule 5.3 (duties of lawyers and law firms with respect to the conduct of nonlawyers); Rule 8.4(a) (duty to avoid violating the Rules through the acts of another).~~

~~[6] A lawyer may pay the usual charges of a legal service plan or a not-for-profit or qualified lawyer referral service. A legal service plan is a prepaid or group legal service plan or a similar delivery system that assists people who seek 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 the public 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 or qualified lawyer referral service. A qualified lawyer referral service is one that is approved by an appropriate regulatory authority as affording adequate protections for the public. See, e.g., the American Bar Association's Model Supreme Court Rules Governing Lawyer Referral Services and Model Lawyer Referral and Information Service Quality Assurance Act (requiring that organizations that are identified as lawyer referral services (i) permit the participation of all lawyers who are licensed and eligible to practice in the jurisdiction and who meet reasonable objective eligibility requirements as may be established by the referral service for the protection of the public; (ii) require each participating lawyer to carry reasonably adequate malpractice insurance; (iii) act reasonably to assess client satisfaction and address client complaints; and (iv) do not make referrals to lawyers who own, operate or are employed by the referral service.)~~

~~[7] 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 the~~



~~public, 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 the public to think that it was a lawyer referral service sponsored by a state agency or bar association. Nor could the lawyer allow in-person, telephonic, or real-time contacts that would violate Rule 7.3.~~

[84] ~~A lawyer also may agree to refer clients~~Paragraph (b)(4) permits a lawyer to make referrals to another lawyer or ~~a~~ nonlawyer professional, in return for the undertaking of that person\* to refer clients or customers to the lawyer. Such reciprocal referral arrangements must not interfere with the lawyer's professional judgment as to making referrals or as to providing substantive legal services. ~~(See Rules~~rules 2.1 and 5.4(c). ~~Except as provided in Rule 1.5(e), a lawyer who receives referrals from a lawyer or nonlawyer professional must not pay anything solely for the referral, but the lawyer does not violate paragraph (b) of this Rule by agreeing to refer clients to the other lawyer or nonlawyer professional, so long as the reciprocal referral agreement is not exclusive and the client is informed of the referral agreement.)~~ Conflicts of interest created by ~~such~~ arrangements made pursuant to paragraph (b)(4) are governed by ~~Rule~~rule 1.7. ~~Reciprocal referral agreements should not be of indefinite duration and should be reviewed periodically to determine whether they comply with these Rules. This Rule does not restrict referrals or divisions of revenues or net income among lawyers within firms comprised of multiple entities. A division of fees between or among lawyers not in the same law firm\* is governed by rule 1.5.1.~~