

# Lawyer Advertising After July 1, 2017: Changes to Virginia Rules of Professional Conduct

by Kellam Parks

In the June 2017 *Virginia Lawyer*, VSB Executive Director Karen A. Gould wrote in her column about then-pending changes to the Rules of Professional Conduct's (the Rules) governance of lawyer advertising. Given the scope of the changes and their importance on how lawyers advertise their services, the Study Committee on the Future of Law felt it worth highlighting again with a few examples.

## Summary of Changes

The amended Rules are simplified and streamlined, leaving a truncated Rule 7.1 (Communications Concerning A Lawyer's Services) and a revised Rule 7.3 (Solicitation of Clients). Rule 7.1 is now a single statement that communications about a lawyer's services may not be false or misleading. Formerly mandatory case result disclaimers have been removed (though Comment [2] discusses the need to avoid leading "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.") Rule 7.4 has been deleted (which had specified when and how a lawyer could communicate he or she was recognized or certified as a specialist in a particular field of law). Comment [4] to Rule 7.1 now states that "[a] lawyer who is a specialist in a particular field of law by experience, specialized training, or education, or is certified by a named professional entity, may communicate such specialty or certification so long as the statement is not false or misleading." Rule 7.5 has also been deleted (which concerned specific uses of names, firm names, and

letterhead). Comment [5] to Rule 7.1 now covers naming; again, focusing on avoiding being false or misleading.<sup>1</sup>

## Specific Considerations

### Endorsements

LinkedIn lets users ask for and provide "endorsements"—short statements about another user or his/her work that can be posted on that user's page. These comments may be "recommendations" and are therefore regulated by Rule 7.3(d).

A client or colleague who gushes online about a lawyer that "he/she's the best lawyer in Virginia!" has likely posted "false or misleading information" per Rule 7.1. This statement may create "a substantial likelihood that...a reasonable person [would] formulate a specific conclusion about the lawyer or the lawyer's services for which there is no reasonable factual foundation" that Comment [1] to Rule 7.1 prohibits. Lawyers must remember that they are not only responsible for content generated by them, but also have a responsibility to monitor and address, if necessary and to the best of their ability, online posts about them made by third parties.

### Solicitation of Clients

The analysis of whether something is a "solicitation" hinges on if the communication from a lawyer is "directed to a specific person known to be in need of legal services in a particular matter and that offers to provide, or can reasonably be understood as offering to provide, legal services for that matter." Comment [1] to Rule 7.3 states that typically communications directed to the general public, such as via a website, or internet

banner advertisement, do not trigger this Rule. Also Rule 7.3(c) excludes persons that: (1) are lawyers; (2) have a familial, personal, prior professional relationship with the lawyer; (3) have had prior contact with the lawyer; or (4) have contacted the lawyer pursuant to court-ordered notification.

### Referrals

Lawyers are still forbidden by Rule 7.3 to give anything of value to a person or organization for recommending them, with limited exceptions as detailed under current Rule 7.3(d).

### Specialization

Lawyers may hold themselves out as specialists or experts in a certain field of law only if the claim is factually substantiated (Virginia Rule 7.1, Comment [4]). While the revised Rules deleted former Rule 7.4's requirement of a disclaimer that Virginia had no certifying body if one were claiming to be a certified specialist, Comment [4] to current Rule 7.1 would follow the same logic, as this statement could be seen as misleading. For example, the statement, "sure, I can help you with that. I'm certified in XYZ claims" would likely violate the Rules, whereas the statement "I've worked in the XYZ field for 25 years — that's all I do," would be permissible.

### Conclusion

The amended Rules reflect the changing landscape of the practice of law and new technologies/methods of communication with the public. There will, of course, continue to be new developments that require consideration (e.g.

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attorney-client matching services, such as AVVO).<sup>2</sup>

Endnotes:

- 1 Current Rules — <http://www.vsb.org/pro-guidelines/index.php/rules/information-about-legal-services/>
- 2 See November, 17, 2017 Supreme Court Petition — [http://www.vsb.org/docs/LEO1885\\_SCV\\_petition111717.pdf](http://www.vsb.org/docs/LEO1885_SCV_petition111717.pdf)



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