



NEW JERSEY STATE BAR ASSOCIATION

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Standing Committee on Ethics and Professional Responsibility
ABA Center for Professional Responsibility
American Bar Association
321 N. Clark Street
Chicago, IL 60654

RE: Proposed Amendments to Model Rules of Professional Conduct Rules 7.1 - 7.5

Dear Committee Members:

Thank you for the opportunity to provide written comments on behalf of the New Jersey State Bar Association (NJSBA) on changes to Model Rules of Professional Conduct 7.1-7.5, proposed by the Association of Professional Responsibility Lawyers (APRL). These comments supplement my earlier testimony on the proposal.

The NJSBA commends the Standing Committee on Ethics and Professional Responsibility and the APRL for their efforts in seeking to update the RPCs governing lawyer advertising and communication. The goal of standardizing and simplifying the rules concerning lawyer advertising and increase consumer access to information about available legal services is important.

However, the association has grave concerns about the current proposal. These proposed changes will undermine the ethical delivery of legal services, and leave the most vulnerable members of the public largely unprotected from inappropriate and unscrupulous solicitations. On behalf of the NJSBA's 18,200 members, we urge the Committee to reject the changes.

The amendments to RPC 7.1 would permit solicitation of clients through "organized information campaigns" that would include television, internet and other forms of electronic communications about a lawyer's services, with few limitations regarding the use of false or misleading information. These means of communication offer important tools to reach people of low- and moderate-means in need of legal services. However it is exactly these sometime-unsophisticated consumers who need the protections the current rules provide to ensure they do not fall prey to overreaching and over-zealous advertising efforts.

The NJSBA believes the current limits on a lawyer's active quest for clients are not only appropriate, but are vital. Nothing that has been presented to the Committee has diminished or defeated the core reasoning that supported their original drafting and inclusion in the body of the ABA Model Rules. These protections are not curious anachronisms of days gone by, nor are they passé traditions that have become antiquated by modern technology or practice changes. Their core purposes have not been vitiated by the advent of the Internet age or the proliferation of electronic communication. If anything, the ability to connect and interact in modern ways makes these well-thought, balanced and critical protections even more necessary for the public.

The NJSBA also has specific concerns with the amendments to RPC 7.2, which would expand those individuals to whom in-person, face-to-face, or telephone solicitations could be made to include “sophisticated users of legal services.” This language is extremely vague and potentially dangerous. It is unclear who qualifies as a sophisticated user. Furthermore, the proposed amendments would allow repeated unsolicited communications. That practice will undoubtedly deepen the public’s negative impression of the profession and does nothing to advance an unmet need for information or services. As such, this proposal is an invitation to harass, under the guise of help. If permitted, our profession’s respect and reputation will suffer.

The amendments would also permit fees to pay the cost of advertising or communications through online group advertising services, and permit payments for marketing and client development services, so long as those providing the services do not direct or regulate the attorney’s judgment. This is a slippery slope toward allowing fee sharing, and the payment of referral fees to non-lawyers or non-lawyer companies, which the current ethical rules prohibit. Several states, such as South Carolina and Ohio, have issued ethics opinions that conclude similar advertising arrangements should be prohibited. The NJSBA agrees.

There is no question that the RPCs governing lawyer advertising and communication can benefit from being updated to reflect changes to technology and information delivery, and any attempt to do that is laudable. These particular proposals, however, go too far and carry far-reaching ethical implications.

To be clear, we are concerned with this process. Fundamental changes to the profession’s ethics rules, like those proposed, should be presented and discussed in a straightforward, forthright manner. Only then can they be properly considered and vetted by all of the stakeholders. Likewise, if improving access to legal services is the real goal, those discussions should be broad in scope, with any proposed rule changes offered in a comprehensive, not piecemeal manner.

We feel that these proposed changes represent much more than the public announcements to the ABA membership indicate. The fact that senior representatives from national legal services websites were present in the room to testify on these proposed changes should speak volumes to the Committee that there is a much deeper meaning – and impact – presented by the proposed changes.

Again, for all of the reasons noted, the NJSBA urges the Committee to reject the APRL proposal.

Sincerely,



Thomas H. Prol, Esq.
President

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cc: Robert B. Hille, NJSBA President-Elect
Angela C. Scheck, NJSBA Executive Director