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Prepaid Legal Services State Regulation Summary

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REGULATORY SUMMARY

Special Statute:

Chapter 488 of Hawaii Revised Statutes governs prepaid legal services and provides regulation by the state's Department of Commerce and Consumer Affairs.

The statute is technically not an insurance law, therefore any plan which complies with the law is allowed to operate. The regulatory scheme of Hawaii allows both life and casualty insurers to offer legal expense insurance.

Exempt from the statute are plans in which either the group or plan administrator is subject to regulation under the statutory provisions regulating insurance or mutual aid, fraternal benefit societies, plans in which any party is the federal government or its agencies, and employee benefit plans regulated by ERISA.

Under the statute, prepaid legal plans are to be offered on a group basis, but an opinion by the state Attorney General found that Chapter 488 also applies to plans whose membership is open to the general public [Att. Gen. Op. 86-2].

Plan administrators are required to obtain a surety bond prior to operation. In lieu of a bond, the Department may accept letters of credit, certificates of deposit, or other evidence of security in the form and amounts deemed appropriate by the Department.

Dept. of Commerce and Consumer Affairs Policy:
The Department of Commerce and Consumer Affairs looked to the 1992 amendment to Chapter 488. With the change, it appears that legal plans operating in Hawaii will no longer have the statutory obligation to provide its members with a free choice of attorney in covered matters. However, the Department of Commerce and Consumer Affairs has indicated that the amendment is merely intended to extend the reach of the statute to plans which do not provide members with a free choice of attorney.

LAWYER ETHICS RULES

Effective January 1, 1994, Hawaii adopted Rules of Professional Conduct modeled after the ABA Model Rules (including Rule 7.3(c)). This provision specifies that lawyers may participate in group or prepaid legal service plans which use in-person or telephone solicitation to attract members, as long as the lawyer does not own or direct the plan and the contact is not directed toward persons known to need legal services in a particular matter covered by the plan.

The rules do not require plan approval by the State Bar prior to operation.

Selected Text Status Table

Selected Text	Current as of	Status of Selected Text
State Statutes, Regulations, Attorney General Opinions, Etc.		
Hawaii Revised Statutes Division 2, Title 2 Prepaid Legal Services	November 2004	Unchanged
Department of the Attorney General State of Hawaii Opinion No. 86-22	December 1, 1986	Unchanged
Lawyer Ethics Rules		
Hawaii Rule of Professional Conduct 5.4: Professional Independence of a Lawyer	November 2004	Unchanged
Hawaii Rule of Professional Conduct 7.1: Communications Concerning a Lawyer's Services	November 2004	Unchanged
Hawaii Rule of Professional Conduct 7.2: Advertising	November 2004	Unchanged
Hawaii Rule of Professional Conduct 7.3: Direct Contact with Prospective Clients	November 2004	Unchanged

Selected Text: State Statutes, Administrative Regulations, Etc.

HAWAII UNIFIED STATUTES DIVISION OF BUSINESS, TRADE AND CONSUMER AFFAIRS TITLE 6. TRADE REGULATION AND PRACTICE CHAPTER 488. PREPAID LEGAL SERVICES

§ 488-1. Definitions.

As used in this chapter:

- (1) *DEPARTMENT* means the department of commerce and consumer affairs.
- (2) *PLAN ADMINISTRATOR* means those persons who have discretionary authority for the management of the plan or for the collection, management, or disbursement of plan moneys.
- (3) *PREPAID LEGAL SERVICE PLAN* ("Plan") means a group legal service plan in which the cost of the services are prepaid by the group member or by some other person or organization in the member's behalf. A group legal service plan is a plan by which legal services are rendered to individual members of a group identifiable in terms of some common interest.

(L 1976, c 156, pt of s 1; am L 1982, c 204, s 8; gen ch 1985; am L 1992, c 19, §1)

Notes - The 1992 amendment, effective April 22, 1992, amended the definition of *PREPAID LEGAL SERVICE PLAN* deleted, "A plan shall provide: (A) That individual members shall be afforded freedom of choice to the selection of their own attorney or attorneys to provide legal services under such plan. (B) For the payment of equal amounts for the cost of services rendered without regard to the identity of the attorney or attorneys selected by the plan member or members. No plan shall otherwise discriminate on the basis of such selection."

Opinion of the Attorney General - A plan whose membership is open to the general public is a group legal service plan, and this chapter applies to such plan. (Att'y Gen. No. 86-22 (1986).

§ 488-2. Applicability; Other Statutes, Rules of Court.

(a) This chapter shall apply to all plans in the State other than:

- (1) Plans in which either the group or the plan administrator is otherwise subject to regulation under chapter 431 or 433.
- (2) Plans in which any party to the plan is the federal government or any agency thereof.
- (3) Any employer-employee plan which is subject to the federal Employee Retirement Income Security Act of 1974, Public Law 93-406.

(b) The operation of all plans subject to this chapter shall also be subject to chapters 480, 481, part 1, 481A, and 481B, and other provisions of law which may be applicable. Chapters 431, 433, and 434 shall not apply to any plans or the operations thereof which are subject to this chapter, except as provided in sections 488-5 and 488-6.

(c) No plan subject to this chapter shall contravene the rules of court adopted by the Hawaii supreme court.

(L 1976, c 156, pt of s 1)

Notes

Chapter 434, referred to in this section, has been repealed.

§ 488-3. Filing and Other Requirements

Sixty days prior to the implementation of any plan and the accumulation or payment of money thereunder, all plan documents shall be submitted in writing to the department. Such documentation shall contain in writing the following:

(1) A brief statement of the plan's financial structure, including a statement of the amount of prepayment, and other charges or dues to be paid by plan members and the manner in which such amount is to be paid.

(2) A statement of the amount of benefits, legal services, or reimbursement for legal services to be furnished each member of a plan, and the period during which it will be furnished; and there are exceptions, reductions, exclusions, limitations, or restrictions of such benefits, legal services, or reimbursement, a detailed statement of such exceptions, reductions, exclusions, limitations, or restrictions.

(3) A statement of the terms and conditions upon which the plan may be cancelled or otherwise terminated by the group, the plan administrator, and persons furnishing legal services, of the member; provided that for any such cancellation or termination, other than by a member, there shall be provision made for the disposition of funds accumulated for the plan.

(4) A statement describing the applicability or nonapplicability of the benefits of the plan to the family dependents of the member.

(5) A statement of the period of grace which will be allowed the member or the member's group for making any payment due under the plan.

(6) A statement describing a procedure for settling disputes between or among the group, the plan administrator, the persons furnishing legal services, and the member.

(7) A statement that the plan includes the endorsements thereon and attached papers, if any, and contains the entire contract or contracts to be used between all parties to a plan.

Any amendments or changes to the documents filed under paragraphs (1) to (7) shall be filed with the department sixty days before they take effect. All documents filed under this section shall be public documents.

(L 1976, c 156, pt of s 1; gen ch 1985)

§ 488-4. Accumulated Funds, Protection, Vesting.

Any plan which accumulates funds prior to the payment of such funds to the persons providing legal services shall meet the requirements of this section.

The plan administrator shall obtain a bond in the amount and form approved by the department which shall be executed by the plan administrator and a surety company authorized to do business in the State as a surety. The bond shall be to the benefit of the members of the plan and shall be filed with the department. In lieu of the bond required by this section, the department may accept letters of credit, certificates of deposits, or other evidences of security in form and amounts deemed appropriate by the department.

[L 1976, c 156, pt of s 1; am L 1992, c 78, s 2]

§ 488-5. Annual Exhibits; Examination by Director.

Each plan shall file with the director of commerce and consumer affairs within thirty days after the end of its fiscal year a statement under oath in such form as the director prescribes containing:

(1) A statement setting forth the total amount of gross receipts and expenditures of the plan during its fiscal year;

(2) The assets and liabilities of the plan at the close of its fiscal year; and

(3) The profit and loss of the plan during its fiscal year.

The powers, authorities, and duties relating to examinations vested in and imposed upon the insurance commissioner under chapter 431 are extended and imposed upon the director in respect to examinations of the plans; provided that an examination shall attempt to obtain or inspect written or oral information or documents in violation of the attorney-client privilege as it is contained in the Code of Professional Responsibility adopted by the supreme court.

(L 1976, c 156, pt of s 1; am L 1982, c 14, s 3; L 1983, c 124, s 17)

§ 488-6. Investments of Certain Plans.

No plan promising or offering to pay for legal services in an amount equal to or in excess of \$25 a year shall invest any of its assets other than as authorized and provided for in respect to domestic insurance companies and

societies under chapter 431, which provisions are hereby extended to and made applicable to prepaid legal service plans.

(L 1976, c 156, pt of s 1)

§ 488-7. Failure to Comply; Penalty.

Any plan which neglects or refuses to comply with this chapter shall be notified in writing by the director of commerce and consumer affairs of the neglect or refusal and to take corrective action; if the neglect or refusal continues for seven days after notification, the plan, group or plan administrator may be fined not more than \$1,000. Every day's neglect or refusal after the expiration of seven days shall be a separate offense.

(L 1976, c 156, pt of s 1; L 1982, c 204, § 1; am L 1983, c 124, § 17)

Selected Text: Attorney General Opinions
Department of the Attorney General
State of Hawaii

Opinion No. 86
 December 1, 1986

Re: Applicability of Chapter 488, Hawaii Revised Statutes, to Prepaid Legal Service Plans Whose Membership is Open to the Public

Honorable Russel S. Nagata
 Director of Commerce and Consumer Affairs
 State of Hawaii
 1010 Richards Street
 Honolulu, Hawaii 96813

Dear Mr. Nagata:

This is in response to the letter of May 22, 1986, from Ms. Sheryl Lee A. Nagata, Time Share Administrator, requesting an opinion as to whether chapter 488, Hawaii Revised Statutes, regulating prepaid legal service plans, applies to a plan whose membership is open to the public. We answer in the affirmative.

Section 488-1, Hawaii Revised Statutes, defines prepaid legal service plan as "a group legal service plan in which the cost of the services are prepaid by the group member or by some other person or organization on the member's behalf." The phrase "group legal service plan" is defined in section 488-1 as "a plan by which legal services are rendered to individual members of a group identifiable in terms of a common interest." The issue is whether a plan whose membership is open to the general public is a group legal service plan.

It is a well-accepted rule of statutory construction that statutes should be construed to give effect to the intention of the legislature, as gleaned primarily from the language contained in the statute itself. *Hawaii Employment Relations Board v. United Public Workers*, 64 Haw. 466, 653 P.2d 666, 667 P.2d 783, 789 (1983); *State v. Uihouli*, 66 Haw. 366, 663 P.2d 630, 633 (1983); *Survivors of Medeiros v. Maui Land and Pineapple Co.*, 65 Haw. 290, 297 P.2d 1306, 1321 (1983); *Treloar v. Swinerton and Walberg Co.*, 65 Haw. 415, 420-21, 653 P.2d 420, 421 (1982); *Black Construction Corp. v. Agsard*, 64 Haw. 274, 283, 639 P.2d 1088, 1094, appeal dismissed, 59 U.S. 1011, 103 S.Ct. 367, 74 L.Ed. 2d 504 (1982); *In re Hawaiian Telephone Co.*, 61 Haw. 572-577, 608 P.2d 138, 138 (1980); *Keller v. Thompson*, 56 Haw. 183, 189, 532 P.2d 664, 669 (1975). Moreover, the Hawaii Supreme Court has stated that, although legislative intent is to be obtained primarily from the language used in a statute, when aids to construction of the meaning of words, as used in the statute, are available, there can be no rule of law which forbids their use, however clear the words may appear on superficial examination. *Treloar v. Swinerton and Walberg Co.*, 65 Haw. 415, 421, 653 P.2d 420, 424 (1982); *Crawford v. Financial Plaza Contractors*, 64 Haw. 415, 420, 643 P.2d 48, 52 (1982).

The definition of "group legal service plan" would clearly apply to a plan providing legal services to members of a credit union, business organization, or club. We also believe that the definition would apply to consumers who have as a common interest the desire to have available affordable legal services and, for that purpose, form a group to secure such services through a prepaid legal service plan. A plan by which legal services are rendered to a consumer group, like the one just described, is like a plan whose members come from the general public. The members of the plan are the group and its common interest is securing legal services through the plan.

This construction of the definition of "group legal service plan" is consistent with the intention of the legislature, as expressed in the committee report on S.B. No. 775-70 which became Act 156, 1976 Hawaii Sess. Laws 282, and was designated as chapter 488, Hawaii Revised Statutes. With respect to the regulatory provisions of Act 156, the conference committee report stated:

This bill provides for regulation of prepaid legal services by the department of regulatory agencies by subjecting prepaid legal service plans to consumer protective legislation.

Senate Conf. Comm. Rep. No. 8-1, 1976 Hawaii S. J. 839; House Conf. Comm. Rep. No. 17-76, 1976 Hawaii H. J. 1102 (emphasis added).

The conference committee report stated further as follows:

Prepaid legal service plans are a method by which legal services may be provided to lower and middle income persons at a price they can afford. A prepaid legal service plan is a plan between a group of consumers and one or more attorneys in which the attorneys agree to provide certain legal services to the group. Through formation of a

group of consumers, these legal services are provided at a lower price than would be available on an individual basis. In addition, the prepaid legal service plans are a method by which legal services may be afforded to lower and middle income persons at a price they can afford. A prepaid legal service plan is a group legal service plan in which the cost of the services have been prepaid by the group member or by some other person or organization in the member's behalf. A group legal service plan means a prepaid plan by which legal services are rendered to individual members of a group identifiable in terms of some common interest. Id.

From the foregoing excerpts, we believe that the legislative intent was to subject prepaid legal service plans to consumer protective legislation. Furthermore, the Legislature envisioned that plans would be established by consumers who had formed themselves into groups. We see no difference between consumers forming a group and opening membership to the group to other consumers who share an interest in affordable legal services and the promoter of a plan who intends to solicit members from among consumers in the State. The members of the group have a common interest in obtaining legal services through the plan. We also note that the purpose of promoting consumer protection by requiring plans to register, post a bond, and file annual reports, and by regulating investments of plans would be frustrated if plans which solicit members from the public are excluded from the statutory definition.

Based on the language of section 488 and the legislative history of chapter 488, it is our opinion that chapter 488 is applicable to a plan whose membership is open to the public.

Very truly yours,
Susan Tamura Sato
Deputy Attorney General

Approved:
Corinne K.A. Watanabe
Attorney General
1986 WL 80030 (Hawaii A.G.)

Selected Text: Rules of Professional Conduct

HAWAII RULES OF PROFESSIONAL CONDUCT

LAWYERS ASSOCIATION

Rule 5.4. PROFESSIONAL INDEPENDENCE OF A LAWYER.

(a) A lawyer or law firm shall not share legal fees with a nonlawyer, except that:

(1) an agreement by a lawyer with the lawyer's firm, partner, or associate may provide for the payment of money, after the lawyer's death, to the lawyer's estate or to one or more specified persons;

(2) a lawyer who undertakes to complete unfinished legal business of a deceased lawyer may pay to the estate of the deceased lawyer that proportion of the total compensation which fairly represents the services rendered by the deceased lawyer. A lawyer who purchases the practice of a deceased, disabled, or disappeared lawyer may, pursuant to the provisions of Rule 1.17, pay to the estate or other representative of that lawyer the agreed-upon purchase price; and

(3) a lawyer or law firm may include nonlawyer employees in a compensation or retirement plan, even though the plan is based in whole or in part on a profit-sharing arrangement.

(b) A lawyer shall not form a partnership with a nonlawyer if any of the activities of the partnership consist of the practice of law.

(c) A lawyer shall not permit a person who recommends, employs, or pays the lawyer to render legal services for another to direct or regulate the lawyer's professional judgment in rendering such legal services.

(d) Except as otherwise permitted by the Rules of the Supreme Court of the State of Hawaii a lawyer shall not practice with or in the form of a professional corporation or association authorized to practice law for a profit, if:

(1) a nonlawyer owns any interest therein, except that a fiduciary representative of the estate of a lawyer may hold the stock or interest of the lawyer for a reasonable time during administration;

(2) a nonlawyer is a corporate director or officer thereof; or

(3) a nonlawyer has the right to direct or control the professional judgment of a lawyer.

COMMENT:

[1] The provisions of this rule express additional limitations on sharing fees. These limitations are to protect the lawyer's professional independence of judgment. Where someone other than the client pays the lawyer's fee or salary, or recommends employment of the lawyer, that arrangement does not modify the lawyer's obligation to the client. As stated in paragraph (c), such arrangements should not interfere with the lawyer's professional judgment.

[2] Subsection (b) applies only if legal services are sold by the partnership to third persons or entities other than the partnership itself.

(Amended November 18, 1994, effective November 18, 1994; further amended February 1, 2000, effective July 1, 2000.)

INFORMATION ABOUT LEGAL SERVICES**Rule 7.1 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:

(a) contains a material misrepresentation of fact or law, or omits a fact necessary to make the statement considered as a whole not materially misleading;

(b) is likely to create an unjustified expectation about results the lawyer can achieve, or states or implies that the lawyer can achieve results by means that violate the rules of professional conduct or other law; or

(c) compares the lawyer's services with other lawyer's services, unless the comparison can be factually substantiated.

COMMENT:

This rule governs all communications about a lawyer's services, including advertising permitted by Rule 7.2. Whatever means are used to make known a lawyer's services, statements about them should be truthful.

(Adopted effective January 1, 1994.)

Rule 7.2 Advertising

(a) Subject to the requirements of Rules 7.1 and 7.3, a lawyer may advertise services through public media, such as a telephone directory, legal directory, newspaper or other periodical, outdoor advertising, radio or television, or through written or recorded communication.

(b) A copy or recording of an advertisement or communication shall be kept for two years after its last dissemination along with a record of when and where it was used.

(c) A lawyer shall not give anything of value to a person for recommending the lawyer's services except that a lawyer may:

- (1) pay the reasonable costs of advertising or communications permitted by this rule;
- (2) pay the usual charges of a not-for-profit lawyer referral service or qualified legal assistance organization; and
- (3) pay for a practice in accordance with Rule 1.17.

(d) Any communication made pursuant to this rule shall include the name of at least one lawyer responsible for its content.

(Adopted effective January 1, 1994.)

COMMENT:

[1] To assist the public in 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.

[2] This rule permits public dissemination of information concerning a lawyer's name or firm name, address 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 or 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 attract the attention of those seeking legal assistance.

[3] Questions of effectiveness and taste in advertising are matters of speculation and subjective judgment. Some jurisdictions have had extensive prohibitions against television advertising, against advertising going beyond specified facts about a lawyer, or against "undignified" advertising. Television is now one of the most powerful media for getting information to the public, particularly persons of low and moderate income; prohibiting television 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.

[4] Neither this rule nor Rule 7.3 prohibits communications authorized by law, such as notice to members of a class in class action litigation.

Record of Advertising

[5] Paragraph (b) requires that a record of the content and use of advertising be kept in order to facilitate enforcement of this rule. It does not require that advertising be subject to review prior to dissemination. Such a requirement would be burdensome and expensive relative to its possible benefits, and may be of doubtful constitutional validity.

Paying Others to Recommend a Lawyer

[6] A lawyer is allowed to pay for advertising permitted by this rule and for the purchase of a law practice in accordance with the provisions of Rule 1.17, but other persons are permitted to pay another person for channeling professional work. *This restriction does not prevent an organization or person other than the lawyer from advertising or recommending the lawyer's services. Thus, a legal aid agency or unpaid legal services plan may pay to advertise legal services provided under its auspices. Likewise, a lawyer may participate in not-for-profit lawyer referral programs and pay the usual fees charged by such programs.* Paragraph (c) does not prohibit paying regular compensation to an assistant, such as a secretary, to prepare communications permitted by this rule. (Emphasis added)

[7] See the Terminology section for the definition of "qualified legal assistance organization" reference in subsection (c)(2).

Rule 7.3. DIRECT CONTACT WITH PROSPECTIVE CLIENTS.

(a) A lawyer shall not by in-person or live telephone contact solicit professional employment from a prospective client with whom the lawyer has no family or prior professional relationship when a significant motive for the lawyer's doing so is the lawyer's pecuniary gain.

(b) A lawyer shall not solicit professional employment from a prospective client by written or recorded communication or by in-person or telephone contact even when not otherwise prohibited by paragraph (a), if:

- (1) the prospective client has made known to the lawyer a desire not to be solicited by the lawyer; or
- (2) the solicitation involves coercion, duress or harassment.

(c) Every written or recorded communication from a lawyer soliciting professional employment from a prospective client with whom the lawyer has no family or prior professional relationship shall be subject to the requirements of Rules 7.1 and 7.2 and shall include the words "Advertising Material" (1) on the outside envelope and at the top of the first page of the contents of the envelope, and (2) at the beginning and ending of any recorded communication. A sample copy of any written or recorded communication directed by a lawyer to one or more prospective clients for purposes of seeking or recommending employment shall be simultaneously forwarded by the lawyer to the Office of Disciplinary Counsel.

(d) Notwithstanding the prohibitions in paragraph (a), a lawyer may participate with a prepaid or group legal service plan operated by an organization not owned or directed by the lawyer which uses in-person or telephone contact to solicit memberships or subscriptions for the plan from persons who are not known to need legal services in a particular matter covered by the plan.

(e) A lawyer shall not solicit professional employment from a prospective client on the lawyer's behalf or on behalf of anyone associated with the lawyer if:

- (1) the communication concerns an action for personal injury or wrongful death involving the person to whom the communication is addressed or a relative of that person, unless the personal injury or wrongful death occurred more than thirty (30) days prior to the sending of the communication; or
- (2) the lawyer knows or should know that the physical, emotional, or mental state of the person makes it unlikely that the person would exercise reasonable judgment in employing a lawyer.

(f) Written communications to prospective clients for the purpose of soliciting professional employment are subject to the following requirements:

- (1) written communications to prospective clients shall be sent only by regular U.S. mail, not by registered mail or other means of restricted delivery, and not by facsimile or e-mail;
- (2) if a contract of representation is sent with the written communication, the top of each page of the contract shall be marked "E-MAIL" in red ink in a type size one size larger than the largest used in the contract and the words "DO NOT SIGN" shall appear on the client signature line;
- (3) written communications shall not resemble legal pleadings or other legal documents;
- (4) any written communication prompted by a specific occurrence shall disclose how the lawyer obtained the information prompting the communication; and
- (5) any written communication shall not reveal the nature of the prospective client's legal problem on the outside of the mailing.

(Adopted effective January 1, 1994; Amended September 8, 1999, effective January 1, 2000.)

COMMENT:

[1] There is a potential for abuse inherent in direct in-person or live telephone contact by a lawyer with a prospective client known to need legal services. These forms of contact between a lawyer and a prospective client subject the layperson to the private importuning of the trained advocate in a direct interpersonal encounter. A prospective client, who may already feel overwhelmed by the circumstances giving rise to the need for legal services, may find it difficult 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.

[2] This potential for abuse inherent in direct in-person or live telephone solicitation of prospective clients justifies its prohibition, particularly since lawyer advertising and written and recorded communication permitted under Rule 7.2 offer alternative means of conveying necessary information to those who may be in need of legal services. Advertising and written and recorded communications which may be mailed or autodialed make it possible for a prospective client to be informed about the need for legal services, and about the qualifications of available lawyers and law firms, without subjecting the prospective client to direct in-person or telephone persuasion that may overwhelm the client's judgment.

[3] The use of general advertising and written and recorded communications to transmit information from lawyer to

prospective client, rather than direct in-person or live telephone 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 are permanently recorded so that they cannot be disputed and may be shared with others who know the lawyer. This potential for formal 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 or live telephone communications between a lawyer to a prospective client can be disputed and are not subject to third-party scrutiny. Consequently, they are much more likely to approach (and occasionally cross) the dividing line between accurate representation and those that are false and misleading.

[4] There is far less likelihood that a lawyer would engage in abusive practices against an individual with whom the lawyer has a prior personal or professional relationship or where the lawyer is motivated by considerations other than the lawyer's pecuniary gain. Consequently, the general prohibition in Rule 7.3(b) and the requirements of Rule 7.3(c) are not applicable in these situations.

[5] But even permitted forms of solicitation may be abused. Thus, any solicitation which contains information which is false or misleading within the meaning of Rule 7.1, which involves coercion, duress or harassment within the meaning of Rule 7.3(b)(1), or which involves contact with a prospective client 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 to a client as permitted by Rule 7.2 the lawyer receives no response, any further effort to communicate with the prospective client may violate the provisions of Rule 7.3(b).

[6] 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 a prospective client. Rather, it is usually addressed to an individual acting in a fiduciary capacity seeking a supplier of legal services. Others who may, if they choose, become prospective clients of the lawyer. Under these circumstances, the activity with the lawyer undertakes in communicating with such representatives and the type of information transmitted to the individual are functionally similar and serve the same purpose as advertising permitted under Rule 7.2.

[7] The requirement in Rule 7.3(c) that certain communications be marked "Advertisement" does not apply to communications sent in response to requests of potential clients or their spouses, partners 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.

[8] Paragraph (d) of this rule would permit an attorney 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 referred to in paragraph (d) 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 Rules 7.1, 7.2 and 7.3(b). See 8.4(a).

(Comment amended effective January 1, 2002.)