

Document: Colo. RPC 7.1

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CO - Colorado Court Rules PAW ETTOC **Colorado Rules of Civil Procedure** **Appendix to Chapters 18 to 20** **The Colorado Rules of Professional Conduct** **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 contains a material misrepresentation of fact or law, or omits a fact necessary to make the statement considered as a whole not materially misleading.

History

(f) added and adopted June 12, 1997, effective July 1, 1997; entire rule and comment amended and adopted June 12, 1997, effective January 1, 1998; entire Appendix repealed and readopted April 12, 2007, effective January 1, 2008; comment amended, effective April 6, 2016; entire rule and comment repealed, readopted, and effective September 10, 2020.

▼ Annotations

Commentary

COMMENT

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

[2] Misleading truthful statements are 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 misleading if a substantial likelihood exists 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. A truthful statement is also misleading if presented in a way that creates a substantial likelihood that a reasonable person would believe the lawyer's communication requires that person to take further action when, in fact, no action is required.

[3] A communication 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 claim about a lawyer's or law firm's services or fees, or an unsubstantiated comparison of the lawyer's or law firm's services or fees with those of other lawyers or law firms, may be misleading if presented with such specificity as would lead a reasonable person to conclude that the comparison or claim 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.

[3A] Any communication that states or implies the client does not have to pay a fee if there is no recovery must also disclose that the client may be liable for costs or the adverse party's attorney fees if ordered by a court. This provision does not apply to communications that state only that contingent or percentage fee arrangements are available, or that state only that the initial consultation is free.

[4] It is professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit or misrepresentation. Rule 8.4(c). See also Rule 8.4(e) for the prohibition against stating or implying an ability to improperly influence a government agency or official or to achieve results by means that violate the Rules of Professional Conduct or other law.

[5] Firm names, letterhead and professional designations are communications concerning a lawyer's services. A firm may be designated by the names of all or some of its current members, by the names of deceased members where there has been a succession in the firm's identity or by a trade name if it is not false or misleading. A lawyer or law firm also may be designated by a distinctive website address, social media username or comparable professional designation that is not misleading. A law firm name or designation is misleading if it implies a connection with a government agency, with a deceased lawyer who was not a former member of the firm, with a lawyer not associated with the firm or a predecessor firm, with a nonlawyer or with a public or charitable legal services organization. If a firm uses a trade name that includes a geographical name such as "Springfield Legal Clinic," an express statement explaining that it is not a public legal aid organization may be required to avoid a misleading implication.

[6] A law firm with offices in more than one jurisdiction may use the same name or other professional designation in each jurisdiction, but identification of the lawyers in an office of the firm must indicate the jurisdictional limitations on those not licensed to practice in the jurisdiction where the office is located.

[7] Lawyers may not imply or hold themselves out as practicing together in one firm when they are not a firm, as defined in Rule 1.0(c), because to do so would be false and misleading.

[8] It is misleading to use the name of a lawyer holding a public office in the name of a law firm, or in communications on the law firm's behalf, during any substantial period in which the lawyer is not actively and regularly practicing with the firm.

State Notes

ANNOTATION

Annotator's note. Since this rule is similar to this rule as it existed prior to its 2020 repeal and readoption and to rules antecedent to that rule, relevant cases construing those rules have been included in these annotations.

The relevant portions of the Colorado Consumer Protection Act (CCPA) are not inconsistent with the prohibition on misleading communications in C.R.P.C. 7.1. Attorney conduct that constitutes deceptive or unfair trade practices is not in compliance with the rules of professional conduct and is not exempted from CCPA liability. *Crowe v. Tull*, 126 P.3d 196 (Colo. 2006).

Lawyer advertisement containing false, misleading, deceptive, or unfair statements in violation of the rule warrants public, rather than private, censure. Respondent terminated referral service being advertised after the initial request for investigation was filed and cooperated in disciplinary proceedings but had received a past letter of admonition and had substantial experience in the practice of law. Respondent's conduct involved dishonesty and misrepresentation and, in conjunction with prior discipline, foreclosed a private sanction. *People v. Carpenter*, 893 P.2d 777 (Colo. 1995).

Rules 7.1 to 7.6 govern information about legal services and concern advertisements, direct contact with prospective clients, and law firm names and letterheads. They do not relate to communications with an existing client. Therefore, firm was not obligated to reveal an attorney's prior arrest and medical history when attorney was added to the attorneys on plaintiff's case. *Moye White LLP v. Beren*, 2013 COA 89, 320 P.3d 373.

Conduct violating this rule in conjunction with other disciplinary rules is sufficient to justify disbarment. *People v. Heupel*, 470 P.3d 1101 (Colo. O.P.D.J. 2017).

Cases Decided Under Former DR 2-101.

Law reviews. For comment, "A Consumers' Rights Interpretation of the First Amendment Ends Bans on Legal Advertising", see 55 Den. L.J. 103 (1978). For article, "Lawyer Advertising", see 15 Colo. Law. 1819 (1986). For article, "Marketing Your Practice", see 16 Colo. Law. 259 (1987). For article, "Reading Beyond the Labels: Effective Regulation of Lawyers' Targeted Direct Mail Advertising", see 58 U. Colo. L. Rev. 255 (1987). For formal opinion of the Colorado Bar Association Ethics Committee on Lawyer Advertising, Solicitation and Publicity, see 19 Colo. Law. 25 (1990). For comment, "After *Shapero v. Kentucky Bar Association*: Much Remains Unresolved About the

Allowable Limits of Restrictions on Attorney Advertising”, see 61 U. Colo. L. Rev. 115 (1990). For formal opinion of the Colorado Bar Association Ethics Committee on Collaboration with Non-Lawyers in the Preparation and Marketing of Estate Planning Documents, see 19 Colo. Law. 1793 (1990).

Conduct violating this rule in conjunction with other disciplinary rules is sufficient to justify suspension. People v. Smith, 830 P.2d 1003 (Colo. 1992).

Conduct violating this rule sufficient to justify suspension. People v. Roehl, 655 P.2d 1381 (Colo. 1983).

Cases Decided Under Former DR 2-102.

Law reviews. For formal opinion of the Colorado Bar Association Ethics Committee on Lawyer Advertising, Solicitation and Publicity, see 19 Colo. Law. 25 (1990). For formal opinion of the Colorado Bar Association Ethics Committee on Listing Support Personnel Names on Letterhead and Business Cards, see 19 Colo. Law. 629 (1990).

Conduct violating this rule in conjunction with other disciplinary rules is sufficient to justify suspension. People v. Smith, 830 P.2d 1003 (Colo. 1992).

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