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Washington Supreme Court Approves Major Changes to Lawyer Marketing Rules

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On January 8, the Washington Supreme Court approved significant amendments to the RPCs governing both lawyer advertising and in-person solicitation. The Supreme Court's action culminates a lengthy review of the lawyer marketing rules by both the WSBA and the Court itself and parallels similar developments nationally. The Supreme Court's order (No. 25700-A-1333) approving the amendments and including the specific text should be available shortly in the "rules" section of the Washington courts' web site. Both the changes and the history behind the amendments are discussed in detail in my March 2019 Ethics & the Law column at:

https://wabarnews.wsba.org/wabarnews/march_2019/MobilePagedReplica.action?pm=2&folio=12#pg14.

In brief, the amendments reduce most marketing regulation to two central concepts reflecting the underlying constitutional limits on lawyer marketing.

RPC 7.1, which requires truthfulness in all lawyer marketing communications regardless of the form, remains. The comments to RPC 7.1, in turn, are expanded to address advertising generally, specialization and law firm names that formerly resided in now-eliminated rules: respectively, former RPCs 7.2, 7.4 and 7.5. Of note in an age when most lawyers focus their practices

narrowly, Comment 8 to RPC 7.1 now permits lawyers to specifically state that they are “specialists”—as long as that is true.

RPC 7.3, which governs in-person solicitation, is also reduced to its constitutional core and now generally permits in-person solicitation unless the contact is misleading, the lawyer knows or reasonably should know the physical or mental state of the person contacted impairs their judgment on employing legal counsel, or the solicitation amounts to harassment (including instances where the target informed the lawyer they did not wish to be contacted).

The package of amendments retains the general prohibition on paying for referrals outright but moves that provision to RPC 7.3(b). An accompanying technical amendment to RPC 5.5 makes clear that law firms can continue to practice across state lines.

Taken together, the amendments considerably simplify the lawyer marketing regulations and, by reducing them to their constitutional core, should provide a relatively stable legal framework moving forward to accommodate continuing technological and economic forces shaping the legal marketplace.

ABOUT THE AUTHOR

Mark J. Fucile of Fucile & Reising LLP advises lawyers, law firms and legal departments throughout the Northwest on professional responsibility and risk management. Mark has chaired both the WSBA Committee on Professional Ethics and its predecessor, the WSBA Rules of Professional Conduct Committee. Mark is a member of the Oregon State Bar Legal Ethics Committee and the Idaho State Bar Section on Professionalism & Ethics. Mark writes the Ethics Focus column for the Multnomah (Portland) Bar's *Multnomah Lawyer*, the Ethics & the Law column for the WSBA *Bar News* and is a regular contributor on legal ethics to the WSBA *NWSidebar* blog. Mark is a contributing author/editor for the current editions of the OSB *Ethical Oregon Lawyer*, the WSBA *Legal Ethics Deskbook* and the WSBA *Law of Lawyering in Washington*. Before co-founding Fucile & Reising LLP in 2005, Mark was a partner and in-house ethics counsel for a large Northwest regional firm. He also teaches legal ethics as an adjunct for the University of Oregon School of Law at its Portland campus. Mark is admitted in Oregon, Washington, Idaho, Alaska and the District of Columbia. He is a graduate of the UCLA School of Law. Mark's telephone and email are 503.224.4895 and Mark@frllp.com.