

1 **16-701. Communications concerning a lawyer’s services.**

2 A lawyer shall not make, elicit, or endorse a false or misleading communication about the
3 lawyer or the lawyer’s services. A communication is false or misleading if it contains a material
4 misrepresentation of fact or law; omits a fact necessary to make the statement considered as a
5 whole not materially misleading; or contains a testimonial about, or endorsement of, the lawyer
6 that is misleading.

7 [As amended, effective August 1, 1992; December 1, 1992; November 1, 1993; January 1, 1999;
8 January 1, 2000; January 20, 2005; as amended by Supreme Court Order No. 17-8300-018,
9 effective December 31, 2017.]

10 ~~[ABA COMMENT:]~~ **Committee commentary. —**

11 [1] This rule governs all communications about a lawyer’s services, including
12 advertising~~[permitted by Rule 16-702 NMRA]~~. Whatever means are used to make known a
13 lawyer’s services, statements about them should be truthful.

14 [2] ~~[Truthful statements that are misleading]~~ Misleading truthful statements are also
15 prohibited by this rule. A truthful statement is misleading if it omits a fact necessary to make the
16 lawyer’s communication considered as a whole not materially misleading. A truthful statement is
17 ~~[also]~~ misleading if ~~[there is]~~ a substantial likelihood exists that it will lead a reasonable person to
18 formulate a specific conclusion about the lawyer or that it will lead a reasonable person to
19 formulate a specific conclusion about the lawyer or the lawyer’s services for which there is no
20 reasonable factual foundation. A truthful statement is also misleading if presented in a way that
21 creates a substantial likelihood that a reasonable person would believe that lawyer’s
22 communication requires that person to take further action when, in fact, no action is required.

1 [3] It is misleading for a communication to provide information about a lawyer’s fee
2 without indicating the client’s responsibilities for costs, if any. If the client may be responsible for
3 costs in the absence of a recovery, a communication shall not indicate that the lawyer’s fee is
4 contingent on obtaining a recovery unless the communication also discloses that the client may be
5 responsible for court costs and the expenses of litigation. See Rule 16-105(C) NMRA.

6 ~~[[3]]~~ [4] ~~[An advertisement]~~ A communication that truthfully reports a lawyer’s
7 achievements on behalf of clients or former clients may be misleading if presented so as to lead a
8 reasonable person to form an unjustified expectation that the same results could be obtained for
9 other clients in similar matters without reference to the specific factual and legal circumstances of
10 each client’s case. Similarly, an unsubstantiated claim about a lawyer’s or a law firm’s services or
11 fees, or an unsubstantiated comparison of the lawyer’s or law firm’s services or fees with ~~the~~
12 services or fees] those of other lawyers or law firms, may be misleading if presented with such
13 specificity as would lead a reasonable person to conclude that the comparison or claim can be
14 substantiated. The inclusion of an appropriate disclaimer or qualifying language may preclude a
15 finding that a statement is likely to create unjustified expectations or otherwise mislead the public.

16 ~~[[4]]~~ [5] It is professional misconduct for a lawyer to engage in conduct involving
17 dishonesty, fraud, deceit, or misrepresentation. Rule 16-804(C) NMRA. See Rule 16-804(E)
18 NMRA for the prohibition against stating or implying an ability to improperly influence
19 ~~improperly~~ a government agency or official or to achieve results by means that violate the Rules
20 of Professional Conduct or other law.

21 [6] Firm names, letterhead, and professional designations are communications
22 concerning a lawyer’s services. A firm may be designated by the names of all or some of its current
23 members, by the names of deceased members where there has been a succession in the firm’s

1 identity, or by a trade name if it is not false or misleading. A lawyer or law firm also may be
2 designated by a distinctive website address, social media username, or comparable professional
3 designation that is not misleading. A law firm name or designation is misleading if it implies a
4 connection with a government agency, with a deceased lawyer who was not a former member of
5 the firm, with a lawyer not associated with the firm or a predecessor firm, with a nonlawyer, or
6 with a public or charitable legal services organization. If a firm uses a trade name that includes a
7 geographical name such as “Springfield Legal Clinic,” an express statement explaining that it is
8 not a public legal aid organization may be required to avoid a misleading implication.

9 [7] A law firm with offices in more than one jurisdiction may use the same name or
10 other professional designation in each jurisdiction, but identification of the lawyers in an office of
11 the firm shall indicate the jurisdictional limitations on those not licensed to practice in the
12 jurisdiction where the office is located.

13 [8] Lawyers may not imply or hold themselves out as practicing together in one firm
14 when they are not a firm, as defined in Rule 16-100(C) NMRA, because to do so may be false and
15 misleading.

16 [9] It is misleading to use the name of a lawyer holding a public office in the name of
17 a law firm, or in communications on the law firm’s behalf, during any substantial period in which
18 the lawyer is not actively and regularly practicing with the firm.

19 [~~Committee commentary.~~]

20 [[H]] [10] A lawyer or nonlawyer assistant shall not make, endorse, or elicit a false or
21 misleading statement on social media about the lawyer or the lawyer’s services. Furthermore, a
22 lawyer has a duty to remove, to the extent reasonably possible, information known to the lawyer
23 that does not comply with the Rules of Professional Conduct.

RULES OF PROFESSIONAL CONDUCT
RULE 16-701

Supreme Court Approved
November 1, 2021

- 1 [As amended by Supreme Court Order No. 15-8300-007, effective December 31, 2015; as
- 2 amended by Supreme Court Order No. 17-8300-018, effective December 31, 2017; as amended
- 3 by Supreme Court Order No. 21-8300-014, effective December 31, 2021.]