

1 **16-702. ~~[Advertising]~~ Communications Concerning a Lawyer's Services: Specific Rules.**

2 A. **Permitted advertising.** ~~[Subject to the requirements of Rules 16-701 and 16-~~
3 ~~703 NMRA of the Rules of Professional Conduct, a] A lawyer may ~~[advertise]~~ communicate
4 information regarding the lawyer's services through ~~[written, recorded or electronic~~
5 ~~communication, including public]~~ any media.~~

6 B. **Payments for referrals.** A lawyer shall not compensate, give, or promise anything
7 of value to a person who is not an employee or lawyer in the same firm for recommending the
8 lawyer's services, except that a lawyer may[:]

9 (1) pay the reasonable costs of advertisements or communications permitted by
10 this rule;

11 (2) pay the usual charges of a legal service plan or a not-for-profit or qualified
12 lawyer referral service. A qualified lawyer referral service is a lawyer referral service that has been
13 approved by an appropriate regulatory authority;

14 (3) pay for a law practice in accordance with Rule 16-117 NMRA~~[of the Rules~~
15 ~~of Professional Conduct]; [and]~~

16 (4) refer clients to another lawyer or a non-lawyer professional ~~[pursuant to]~~
17 under an agreement not otherwise prohibited under these rules that provides for the other person
18 to refer clients or customers to the lawyer, if

19 (i) the reciprocal referral agreement is not exclusive, and

20 (ii) the client is informed of the existence and nature of the agreement[:];

21 and

22 (5) give nominal gifts as an expression of appreciation that are neither intended
23 nor reasonably expected to be a form of compensation for recommending a lawyer's services.

1 C. A lawyer shall not state or imply that a lawyer is certified as a specialist in a
2 particular field of law, unless

3 (1) the lawyer has been certified as a specialist by the State Bar of New Mexico, an
4 organization that has been approved by an appropriate authority of another state or the District of
5 Columbia or a U.S. Territory, or an organization that has been accredited by the American Bar
6 Association; and

7 (2) the name of the certifying organization is clearly identified in the
8 communication.

9 ~~[C.]~~ **D. Required information in communications.** Any communication made ~~[pursuant~~
10 ~~to]~~ under this rule [shall] must include the name and ~~[office address]~~ contact information of at least
11 one lawyer or law firm responsible for its content.

12 [As amended, effective October 1, 1989; August 1, 1992; November 1, 1993; January 1, 2000;
13 November 15, 2000; as amended by Supreme Court Order No. 08-8300-29, effective November
14 3, 2008; as amended by Supreme Court Order No. 21-8300-014, effective December 31, 2021.]

15 **Committee commentary.** —

16 ~~[[1]—To assist the public in learning about and obtaining legal services, lawyers should~~
17 ~~be allowed to make known their services not only through reputation but also through organized~~
18 ~~information campaigns in the form of advertising. Advertising involves an active quest for clients,~~
19 ~~contrary to the tradition that a lawyer should not seek clientele. However, the public's need to~~
20 ~~know about legal services can be fulfilled in part through advertising. This need is particularly~~
21 ~~acute in the case of persons of moderate means who have not made extensive use of legal services.~~
22 ~~The interest in expanding public information about legal services ought to prevail over~~

1 ~~considerations of tradition. Nevertheless, advertising by lawyers entails the risk of practices that~~
2 ~~are misleading or overreaching.]~~

3 ~~[[2]]~~ [1] This rule permits public dissemination of information concerning a lawyer's
4 ~~or law firm's~~ name [~~or firm name~~], address, email address, website, and telephone number; the
5 kinds of services the lawyer will undertake; the basis on which the lawyer's fees are determined,
6 including prices for specific services and payment and credit arrangements; a lawyer's foreign
7 language ability; names of references and, with their consent, names of clients regularly
8 represented; and other information that might invite the attention of those seeking legal assistance.

9 ~~[[3]]—Questions of effectiveness and taste in advertising are matters of speculation and~~
10 ~~subjective judgment. Some jurisdictions have had extensive prohibitions against television and~~
11 ~~other forms of advertising, against advertising going beyond specified facts about a lawyer or~~
12 ~~against "undignified" advertising. Television, the Internet, and other forms of electronic~~
13 ~~communications are now among the most powerful media for getting information to the public,~~
14 ~~particularly persons of low and moderate income. Prohibiting television, Internet, and other forms~~
15 ~~of electronic advertising, therefore, would impede the flow of information about legal services to~~
16 ~~many sectors of the public. Limiting the information that may be advertised has a similar effect~~
17 ~~and assumes that the bar can accurately forecast the kind of information that the public would~~
18 ~~regard as relevant. *But see* Rule 16-703(A) NMRA of the Rules of Professional Conduct for the~~
19 ~~prohibition against the solicitation of a prospective client through a real-time electronic exchange~~
20 ~~initiated by the lawyer.~~

21 ~~———[[4]]——Neither this rule nor Rule 16-703 NMRA of the Rules of Professional Conduct~~
22 ~~prohibits communications authorized by law, such as notice to members of a class in class action~~
23 ~~litigation.~~

1 ~~[5]~~ [2] Except as permitted under Subparagraphs (B)(1) through ~~[(4)]~~ (5), lawyers are not
2 permitted to pay others for recommending the lawyer’s services ~~[or for channeling professional~~
3 ~~work in a manner that violates Rule 16-703]~~. A communication contains a recommendation if it
4 endorses or vouches for a lawyer’s credentials, abilities, competence, character, or other
5 professional qualities. Directory listings and group advertisements that list lawyers by practice
6 area, without more, do not constitute impermissible “recommendations.”

7 [3] Subparagraph (B)(1) ~~;~~ ~~however,~~ allows a lawyer to pay for advertising and
8 communications permitted by this rule, including the costs of print directory listings, on-line
9 directory listings, newspaper ads, television and radio airtime, domain-name registrations,
10 sponsorship fees, Internet-based advertisements, and group advertising. A lawyer may compensate
11 employees, agents and vendors who are engaged to provide marketing or client-development
12 services, such as publicists, public-relations personnel, business-development staff, television and
13 radio station employees or spokespersons, and website designers.

14 [4] Paragraph (B)(5) permits nominal gifts as might be given for holidays, or other
15 ordinary social hospitality. A gift is prohibited if offered or given in consideration of any promise,
16 agreement or understanding that the gift would be forthcoming or that referral would be made or
17 encouraged in the future.

18 [5] ~~[Moreover, a]~~ A lawyer may pay others for generating client leads, such as Internet-
19 based client leads, as long as the lead generator does not recommend the lawyer, any payment to
20 the lead generator is consistent with ~~[Rules]~~ Rule 16-105(E) NMRA (fee splitting) and Rule 16-
21 504 NMRA (professional independence of the lawyer), and the lead generator’s communications
22 are consistent with Rule 16-701 NMRA (communications concerning a lawyer’s services). To
23 comply with Rule 16-701 NMRA, a lawyer must not pay a lead generator that states, implies, or

1 creates a reasonable impression that it is recommending the lawyer, is making the referral without
2 payment from the lawyer, or has analyzed a person’s legal problems when determining which
3 lawyer should receive the referral. See Comment [2] (definition of recommendation). *See*
4 *also* Rule 16-503 NMRA (duties of lawyers and law firms with respect to the conduct of non-
5 lawyers); Rule 16-804(A) NMRA (duty to avoid violating the rules through the acts of another).

6 [6] A lawyer may pay the usual charges of a legal service plan or a not-for-profit or
7 qualified lawyer referral service. A legal service plan is a prepaid or group legal service plan or a
8 similar delivery system that assists people who seek to secure legal representation. A lawyer
9 referral service, on the other hand, is any organization that holds itself out to the public as a lawyer
10 referral service. ~~[Such] Qualified referral services are [understood by the public to be]~~ consumer-
11 oriented organizations that provide unbiased referrals to lawyers with appropriate experience in
12 the subject matter of the representation and afford other client protections, such as complaint
13 procedures or malpractice insurance requirements. Consequently, this rule only permits a lawyer
14 to pay the usual charges of a not-for-profit or qualified lawyer referral service. A qualified lawyer
15 referral service is one that is approved by an appropriate regulatory authority as affording adequate
16 protections for the public. *See, e.g.*, the American Bar Association’s Model Supreme Court Rules
17 Governing Lawyer Referral Services and Model Lawyer Referral and Information Service Quality
18 Assurance Act~~[(requiring that organizations that are identified as lawyer referral services (i)~~
19 ~~permit the participation of all lawyers who are licensed and eligible to practice in the jurisdiction~~
20 ~~and who meet reasonable, objective eligibility requirements as may be established by the referral~~
21 ~~service for the protection of the public; (ii) require each participating lawyer to carry reasonably~~
22 ~~adequate malpractice insurance; (iii) act reasonably to assess client satisfaction and address client~~

1 ~~complaints; and (iv) do not make referrals to lawyers who own, operate or are employed by the~~
2 ~~referral service)].~~

3 [7] A lawyer who accepts assignments or referrals from a legal service plan or referrals
4 from a lawyer referral service must act reasonably to assure that the activities of the plan or service
5 are compatible with the lawyer's professional obligations. [~~See Rule 16-503 NMRA of the Rules~~
6 ~~of Professional Conduct.~~] Legal service plans and lawyer referral services may communicate with
7 the public, but [~~such~~] the communication must be in conformity with these rules. Thus, advertising
8 must not be false or misleading, as would be the case if the communications of a group advertising
9 program or a group legal services plan would mislead the public to think that it was a lawyer
10 referral service sponsored by a state agency or bar association. [~~Nor could the lawyer allow in-~~
11 ~~person, telephonic, or real-time contacts that would violate Rule 16-703 NMRA of the Rules of~~
12 ~~Professional Conduct.~~]

13 [8] A lawyer also may agree to refer clients to another lawyer or a non-lawyer
14 professional, in return for the undertaking of that person to refer clients or customers to the lawyer.
15 [~~Such~~] The reciprocal referral arrangements must not interfere with the lawyer's professional
16 judgment as to making referrals or as to providing substantive legal services. *See* Rule 16-
17 201 NMRA and Rule 16-504(C) NMRA[~~of the Rules of Professional Conduct~~]. Except as
18 provided in [~~Paragraph E of Rule 16-105~~] Rule 16-105(E) NMRA[~~of the Rules of Professional~~
19 ~~Conduct~~], a lawyer who receives referrals from a lawyer or non-lawyer professional must not pay
20 anything solely for the referral, but the lawyer does not violate Paragraph B of this rule by agreeing
21 to refer clients to the other lawyer or non-lawyer professional, so long as the reciprocal referral
22 agreement is not exclusive and the client is informed of the referral agreement. Conflicts of interest
23 created by [~~such~~] these types of arrangements are governed by Rule 16-107 NMRA[~~of the Rules~~

1 of Professional Conduct]. Reciprocal referral agreements should not be of indefinite duration and
2 should be reviewed periodically to determine whether they comply with these rules. This rule does
3 not restrict referrals or divisions of revenues or net income among lawyers within firms comprised
4 of multiple entities.

5 **Communications about Fields of Practice**

6 [9] Paragraph A of this rule permits a lawyer to communicate that the lawyer does or
7 does not practice in particular areas of law. A lawyer is generally permitted to state that the lawyer
8 “concentrates in” or is a “specialist,” practices a “specialty,” or “specializes in” particular fields
9 based on the lawyer’s experience, specialize training or education, but those communications are
10 subject to the “false and misleading” standard applied in Rule 16-701 NMRA to communications
11 concerning a lawyer’s services.

12 [10] The Patent and Trademark Office has a long-established policy of designating
13 lawyers practicing before that Office. The designation of Admiralty practice also has a long
14 historical tradition associated with maritime commerce and the federal courts. A lawyer’s
15 communications about these practice areas are not prohibited by this rule.

16 [11] This rule permits a lawyer to state that the lawyer is certified as a specialist in a
17 field of law if the certification is granted by the State Bar of New Mexico; by an organization that
18 has been approved by an appropriate authority of another state, the District of Columbia, or a U.S.
19 Territory, or accredited by the American Bar Association or another organization, such as a state
20 supreme court or a state bar association, that has been approved by the authority of the state, the
21 District of Columbia, or a U.S. Territory to accredit organizations that certify lawyers as
22 specialists. Certification signifies that an objective entity has recognized an advanced degree of
23 knowledge and experience in the specialty area greater than is suggested by general licensure to

1 practice law. Certifying organizations may be expected to apply standards of experience,
2 knowledge, and proficiency to ensure that a lawyer’s recognition as a specialist is meaningful and
3 reliable. In order to ensure that consumers can obtain access to useful information about an
4 organization granting certification, the name of the certifying organization must be included in any
5 communication regarding the certification.

6 [12] This rule requires that any communication about a lawyer or a law firm’s services
7 include the name of, and contact information for, the lawyer or law firm. Contact information
8 includes a website address, a telephone number, an email address, or a physical office location.

9 [Adopted by Supreme Court Order No. 08-8300-029, effective November 3, 2008; as amended by
10 Supreme Court Order No. 15-8300-007, effective December 31, 2015; as amended by Supreme
11 Court Order No. 21-8300-014, effective December 31, 2021.]