16-703. Solicitation of clients.

A. Definitions. “Solicitation” or “solicit” denotes a communication initiated by or on behalf of a lawyer or law firm that is directed to a specific person the lawyer knows or reasonably should know needs legal services in a particular matter and that offers to provide, or reasonably can be understood as offering to provide, legal services for that matter.

[A.] B. In-person, live, or real-time contact. A lawyer shall not solicit professional employment by in-person, live, telephone or real-time electronic contact when a significant motive for the lawyer’s doing so is the lawyer’s or law firm’s pecuniary gain, unless the [person contacted] contact is with a

(1) is a lawyer; or

(2) person who has a family, close personal or prior professional relationship with the lawyer; or

(3) person who is known by the lawyer to be experienced with the use or retention of related legal services.

[B] C. Restrictions on all contacts. A lawyer shall not solicit professional employment [by written, recorded or electronic communication or by in-person, telephone or real-time electronic contact] even when not otherwise prohibited by Paragraph [A] [B, if[;]

(1) the target of the solicitation 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.] Notice required. Every written, recorded or electronic communication from a lawyer soliciting professional employment from anyone known to be in need of legal services in a particular matter shall include the words “Advertising Material” on the outside envelope, if any,
and at the beginning and ending of any written, recorded or electronic communication, unless the recipient of the communication is a person specified in Subparagraphs (A)(1) or (2).

D. **Exceptions.** This rule does not prohibit communications authorized by law or ordered by a court or other tribunal. Notwithstanding the prohibitions in [Paragraph A] this rule, a lawyer may participate with a prepaid or group legal service plan operated by an organization not owned or directed by the lawyer that uses [in-person or telephone] live person-to-person contact to [solicit] enroll [memberships] members or sell subscriptions for the plan from persons who are not known to need legal services in a particular matter covered by the plan.

[Adopted, effective October 1, 1989; as amended, effective August 1, 1992; as amended by Supreme Court Order No. 08-8300-029, effective November 3, 2008; as amended by Supreme Court Order No. 15-8300-007, effective December 31, 2015; as amended by Supreme Court Order No. 21-8300-014, effective December 31, 2021.]

**Committee commentary.** —

[1] A solicitation is a targeted communication initiated by the lawyer that is directed to a specific person and that offers to provide, or can reasonably be understood as offering to provide, legal services. In contrast, a Paragraph B prohibits a lawyer from soliciting professional employment by live person-to-person contact when a significant motive for the lawyer’s doing so is the lawyer’s or the firm’s pecuniary gain. A lawyer’s communication [typically does] is not to constitute a solicitation if it is directed to the general public, such as through a billboard, an Internet banner advertisement, a website or a television commercial, or if it is in response to a request for information, or is automatically generated in response to [Internet] electronic searches.

[2] “Live person-to-person contact” means in-person, face-to-face, live telephone and
other real-time visual or auditory person-to-person communications, where the person is subject
to a direct personal encounter without time for reflection. That person-to-person contact does not
include chat rooms, text messages or other written communications that recipients may easily
disregard. [There is a] A potential for [abuse] overreaching exists when a [solicitation involves
direct in-person, live telephone or real-time electronic contact by a] lawyer, seeking pecuniary
gain, [with someone] solicits a person known to be in need of legal services. [These forms] This
form of contact [subject] subjects a person to the persuasion of the trained advocate in a direct
interpersonal encounter. The person, who may already feel overwhelmed by the circumstances
giving rise to the need for legal services, may find it difficult [fully] to fully 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] on an immediate response. The
situation is fraught with the possibility of undue influence, intimidation, and overreaching.

[3]—This potential for abuse inherent in direct in-person, live telephone or real-time
electronic solicitation justifies its prohibition, particularly since lawyers have alternative means of
conveying necessary information to those who may be in need of legal services. In particular,
communications can be mailed or transmitted by email or other electronic means that do not
involve real-time contact and do not violate other laws governing solicitations. These forms of
communications and solicitations make it possible for the public to be informed about the need for
legal services and about the qualifications of available lawyers and law firms without subjecting
the public to direct in-person, telephone or real-time electronic persuasion that may overwhelm a
person’s judgment.

[4]—The use of general advertising and written, recorded, or electronic communications
to transmit information from lawyer to the public, rather than direct in-person, live telephone or
real-time electronic contact, will help to assure that the information flows cleanly as well as freely.

The contents of advertisements and communications permitted under Rule 16-702 NMRA of the Rules of Professional Conduct can be permanently recorded so that they cannot be disputed and may be shared with others who know the lawyer. This potential for informal review is itself likely to help guard against statements and claims that might constitute false and misleading communications in violation of Rule 16-701 NMRA of the Rules of Professional Conduct. The contents of direct in-person, live telephone or real-time electronic contact can be disputed and may not be subject to third-party scrutiny. Consequently, they are much more likely to approach (and occasionally cross) the dividing line between accurate representations and those that are false and misleading.

There is far less likelihood that a lawyer would engage in abusive practices overreaching against a former client or a person with whom the lawyer has a close personal, family, business, or professional relationship or in situations in which the lawyer is motivated by considerations other than the lawyer’s pecuniary gain. Nor is there a serious potential for abuse overreaching when the person contacted is a lawyer or is a person known by the lawyer to be experienced with the use or retention of related legal services. For instance, an “experienced user” of legal services may include those who hire outside counsel to represent the entity; entrepreneurs who regularly engage business, employment law, or intellectual property lawyers; insurance claims professionals who regularly engage with lawyers; small business proprietors who hire lawyers for lease or contract issues; and other people who retain lawyers for business transactions or formations. Consequently, the general prohibition in Paragraph A of Rule 16-703 NMRA of the Rules of Professional Conduct and the requirements of Paragraph C of that rule are not applicable in those situations. Also, Paragraph [A] B is not intended to prohibit a lawyer from
participating in constitutionally protected activities of public or charitable legal-service organizations or bona fide political, social, civic, fraternal, employee or trade organizations whose purposes include providing or recommending legal services to their members or beneficiaries.

[6] [4] But even permitted forms of solicitation can be abused. Thus, any solicitation is prohibited: (1) that contains false or misleading information within the meaning of Rule 16-701 NMRA of the Rules of Professional Conduct; (2) that involves coercion, duress, or harassment within the meaning of Rule 16-703(B)(2) 16-703(C)(2) NMRA of the Rules of Professional Conduct; or (3) that involves contact with someone who has made known to the lawyer a desire not to be solicited by the lawyer within the meaning of Rule 16-703(B)(1) 16-703(C)(1) NMRA of the Rules of Professional Conduct is prohibited. Moreover, if after sending a letter or other communication permitted by Rule 16-702 NMRA of the Rules of Professional Conduct the lawyer receives no response, any further effort to communicate with the recipient of the communication may violate the provisions of Rule 16-703(B) NMRA of the Rules of Professional Conduct.

[7] [5] This rule does not 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 that the lawyer or lawyer’s firm is willing to offer. This form of communication is not directed to people who are seeking legal services for themselves. Rather, it is usually addressed to an individual acting in a fiduciary capacity seeking a supplier of legal services for others who may, if
they choose, become prospective clients of the lawyer. Under these circumstances, the activity that
the lawyer undertakes in communicating with such representatives and the type of information
transmitted to the individual are functionally similar to and serve the same purpose as advertising
permitted under Rule 16-702 NMRA[ of the Rules of Professional Conduct].

[[8]] The requirement of Rule 16-703(C) NMRA of the Rules of Professional Conduct
that certain communications be marked “Advertising Material” does not apply to communications
sent in response to requests of potential clients or their spokespersons 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.]

[[6]] Communications authorized by law or ordered by a court or a tribunal include a
notice to potential members of a class in class action litigation.

[[9]] Paragraph D of this rule permits a lawyer to participate with an organization
that uses personal contact to [solicit enroll] 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 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] person-to-person
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] must be designed to inform potential plan
members generally of another means of affordable legal services. Lawyers who participate in a
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A legal service plan must reasonably assure that the plan sponsors are in compliance with Rules 16-701, 16-702, and 16-703(B) NMRA of the Rules of Professional Conduct. [See Rule 16-804(A) NMRA of the Rules of Professional Conduct.]

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