NEW YORK CITY BAR

February 20, 2026

By Email

David Nocenti, Esq.
Office of Court Administration
25 Beaver Street, 10th Floor
New York, NY 10004
rulecomments@nycourts.gov

Re: Comment on Proposed Rule 7.2 of the Rules of Professional Conduct Relating to Attorney Advertising and Solicitation

Dear Mr. Nocenti:

On December 30, 2025, the Office of Court Administration ("OCA") sought comment from interested members of the public and the legal profession on the following proposal:

> Proposal to amend Rules 1.0, 7.1, 7.2, 7.3, and 7.4 of the Rules of Professional Conduct relating to attorney advertising and solicitation.

The New York City Bar Association's ("City Bar") Legal Referral Service Committee, State Courts of Superior Jurisdiction Committee, and Litigation Committee do not support the changes to referral fee law in proposed Rule 7.2.

To the extent that changes to referral fee law are to be considered, the issues are complicated and should be addressed separately and subject to a specific round of public comments on proposed Rule 7.2 alone, leaving current New York law restricting referral fees in effect for the time being.

By way of example, proposed Rule 7.2 (b) (2) refers to "a not-for-profit *or qualified* lawyer referral service" (emphasis added); however, there is no such qualification process in New York. In the future, during a specific round of public comments on proposed Rule 7.2, it would make sense to debate whether the words "or qualified" should be deleted from the proposed rule and only considered after a qualification process is introduced, becomes law, and is in effect.

Thank you for considering our comments. If you believe that it would be beneficial, we would be happy to discuss these comments with you further.

Respectfully,

Erica Gomez, Chair
Legal Referral Service Committee

Joseph M. Sanderson, Chair
State Courts of Superior Jurisdiction Committee

Cassandra L. Porsch, Chair
Litigation Committee

Contact
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New York County Lawyers Association

February 20, 2026

David Nocenti

David Nocenti, Esq.
Office of Court Administration ("OCA")
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Email: rulecomments@nycourts.gov

VIA EMAIL

RE : Request for Public Comment on a proposal to amend Rules 1.0, 7.1, 7.2, 7.3 and 7.4 of the Rules of Professional Conduct relating to attorney advertising and solicitation

Dear M. Nocenti:

On behalf of the New York County Lawyers Association ("NYCLA") Professional Ethics Committee ("the Committee"), we write to provide comments with respect to the Request for Public Comment on a proposal to amend Rules 1.0, 7.1, 7.2, 7.3 and 7.4 of the Rules of Professional Conduct ("NYRPC") relating to attorney advertising and solicitation ("Proposed Rule"), *available at* https://www.nycourts.gov/LegacyPDFS/rules/comments/pdf/RequestForPublicComment-RulesOfProfessionalConduct-AttorneyAdvertising-123025.pdf.

In 2018, the American Bar Association ("ABA") finalized a significant overhaul of its Model Rules on attorney advertising (Rules 7.1–7.5) with Resolution 101.[1] This change, the culmination of more than two years of study and public hearings by the ABA Standing Committee on Ethics and Professional Responsibility ("SCEPR"), was designed to "streamline and simplify" a "dizzying" patchwork of state regulations that had become technologically obsolete.[2] The ABA shifted from a prescriptive regulatory approach to a more objective standard centered on the prohibition of false and misleading communications.

[1] *See generally* Proposed Amend. to Model Rules of Pro.Conduct r. 7.1–7.5 (A.B.A. 2018) https://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/final_clean_for_posting_rules_7_1_to_7_3.pdf.
[2] *Id.* at 14, 19.

The 2018 amendments were prompted by proposals from the Association of Professional Responsibility Lawyers ("APRL"), which highlighted the need to reflect the reality of internet marketing and reduce compliance confusion across jurisdictions.[3]

First, the ABA eliminated the mandatory requirement to label targeted written solicitations as "Advertising Material," because it concluded that consumers are now "accustomed to receiving advertising material via many methods of paper and electronic delivery", and that "advertising materials are unlikely to mislead consumers due to the nature of the communications."[4]

Second, through Model Rule 7.2(b)(5), the Proposed Rule authorizes lawyers to give "nominal gifts" as an expression of gratitude for a referral. These must be "token items" not intended or reasonably expected to be a form of compensation for the recommendation. The new provision states that a nominal gift is permissible only where it is not expected or received as payment for the recommendation. A nominal gift "cannot be promised in advance and must be no more than a token item."[5]

Third, the ABA replaced the requirement to list a physical "office address" with a requirement for "contact information," such as a website address, telephone number, or email to address technological advances on how a lawyer may be contacted.[6]

Fourth, Model Rules 7.4 (Specialization) and 7.5 (Firm Names) were deleted and their essential concepts were merged into Rules 7.1 and 7.2 to create a more unified regulatory structure.

The Proposed Rule adopts the ABA's streamlined structure but maintains certain unique New York safeguards. For example, the Proposed Rule continues to strictly prohibit the use of fictitious law firm names or trade names that are false or misleading (Rule 7.1(e)(2)).

The Committee generally supports the Proposed Rule because it aligns with the purposes of the regulations governing advertising, referrals, and solicitations under the New York Rules of Professional Conduct ("N.Y. RPC"), particularly N.Y. RPC §§ 7.1, 7.2, and 7.3.

The Proposed Rule does not present First Amendment concerns because it simplifies and reduces the restrictions that the current rules currently contain and adopt the less-restrictive ABA model. As the SCEPR explained in proposing their amended advertising rules, the Supreme Court decided in *Bates v. State Bar of Arizona*, that "lawyer advertising is commercial speech protected by the First Amendment.[7] Advertising that is false, misleading and deceptive may be restricted, but many other limitations have been struck down." The current NYRPC 7.1 advertisement rule includes restrictions on client testimonials and seventeen other subparts,

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[3] *See generally* Ass'n of Pro. Responsibility Lawyers (APRL), *Proposed Amendments to ABA Model Rules of Pro. Conduct Rules 7.1, 7.2, 7.3, 7.4 & 7.5*, (Sept. 29, 2016).
[4] Am. Bar Ass'n, *Rules 7.1 through 7.5 and Comments of the ABA Model Rules of Professional Conduct*, 19 (August 2018) https://www-media.floridabar.org/uploads/2021/06/ABA-Resolution-101-Lawyer-Advertising.pdf.
[5] *Id.* at 17.
[6] *Id.*
[7] *Id.* at 14; Bates v. State Bar of Arizona, 433 U.S. 350, 382 (1977).

which the Proposed Rule argues makes the rule overly complicated. Replacing the current 7.1 rule with the ABA Model would reduce restrictions and limit advertising restrictions to the "false, misleading, or deceptive" standard in line with the ABA.

Furthermore, the Committee supports the inclusion of a materiality requirement in NYRPC 7.1. Under this standard, a communication is only 'misleading' if it contains a material misrepresentation or omission. This objective qualifier is essential to protect practitioners from disciplinary actions over de minimis technicalities, instead focusing enforcement on deceptions that significantly alter the 'total mix' of information a reasonable consumer relies upon to select counsel. This alignment with the constitutional commercial speech doctrine as outlined in *Bates* ensures that regulations are narrowly tailored to prevent actual consumer harm.[8]

The Committee recommends that OCA clarify the practical effect of deleting "advertisement" and "computer-accessed communication" because the Proposed Rule may create vagueness.

The Committee agrees that the current definitions can create line-drawing problems with emerging technology and the prevalence of social media. However, removing these defined terms may also create uncertainty for practitioners attempting to determine how the revised framework applies to common digital communications (including websites, social media, paid search, lead forms, and vendor-hosted intake tools). Therefore, the Committee proposes the inclusion of a new comment to the proposed NYRPC 7.1 that preserves the 'primary purpose' distinction to prevent informational content from being misclassified as regulated advertising, along the following lines:

> *"The prohibition against false or misleading communications applies to all communications regarding a lawyer's services. However, the requirements of this Rule do not apply to communications that are primarily educational, informational, or social in nature, and which are not disseminated for the primary purpose of client retention for pecuniary gain. In determining whether a communication has the 'primary purpose' of client retention, the lawyer should consider whether the content is intended to provide general legal information to the public as opposed to a specific solicitation of legal business. For example, a timely legal alert regarding a change in the law or a blog post discussing a recent court decision generally would not be considered a communication subject to the labeling and retention requirements of these Rules unless it includes a specific call to action for the viewer to retain the lawyer for a particular matter."*

[8] 433 U.S. 350, 382 (1977).

Furthermore, the Committee supports the goal of simplifying and modernizing NYRPCs 7.1–7.4, but notes that the move from detailed New York provisions to broadly phrased, technology-neutral standards may introduce interpretive uncertainty in application. In particular, the "any media" authorization and "reasonable costs" language may prove under-specified in rapidly evolving marketing contexts. The Committee recommends that the revised NYRPCs 7.1–7.3 apply fully to contemporary digital marketing and communications, and that the definitional deletions are intended to simplify the framework, not narrow its coverage. To address this, we suggest amending Rule 7.2(b)(1) to explicitly include contemporary digital costs such as SEO and algorithmic placement, provided they remain grounded in a fair-market-value standard, along the following lines:

> *"(b) A lawyer shall not compensate, give or promise anything of value to a person for recommending the lawyer's services except that a lawyer may: (1) pay the reasonable costs of advertisements or communications permitted by this Rule**, including, but not limited to, the purchase of digital advertising space, search engine optimization (SEO) services, and fees for the use of algorithmic or automated marketing platforms, provided such costs reflect fair market value for the services rendered and do not constitute a reward for a specific recommendation**;"*

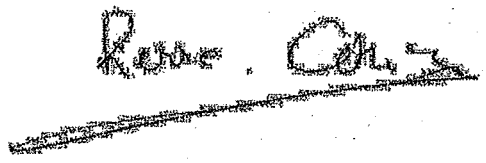
In addition, we urge OCA to provide clearer guidance on the 'nominal gift' exception under proposed NYRPC 7.2(b)(5). While we support this adoption of the ABA standard, 'nominal' remains an undefined term that could lead to inconsistent enforcement across the Departments. We suggest OCA establishes a 'bright-line' monetary ceiling—or reference the existing 'social hospitality' standards in the Code of Judicial Conduct—to ensure that these tokens of appreciation do not inadvertently evolve into unauthorized referral fees.

Overall, the Committee supports the Proposed Rule, which recognizes modern lawyer communications while preserving the essential protections of the NYRPC. Adoption of the Proposed Rule, together with focused clarifying guidance, would demonstrate New York's commitment to modernization and ethical integrity in lawyer advertising and solicitation.

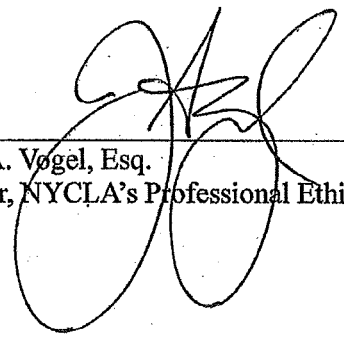
Thank you for considering our comments. If you believe that it would be beneficial, we would be happy to discuss these comments with you further.

New York County Lawyers Association

Best regards,



Pierre Ciric, Esq.
Co-Chair, NYCLA's Professional Ethics Committee[9]



Joseph A. Vogel, Esq.
Co-Chair, NYCLA's Professional Ethics Committee

[9] This letter has been approved by NYCLA's Committee on Professional Ethics and approved for dissemination by NYCLA's President as a Committee statement. This statement has not been approved by the NYCLA Board of Directors and does not necessarily represent the views of the Board.

rulecomments@nycourts.gov

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25 Beaver Street, 10th Floor
New York, NY 10004

February 20, 2026

Dear Mr. Nocenti:

The undersigned are members of the New York Bar who also are members of the Committee on Professional Ethics of the New York State Bar Association but are not members of the Committee on Standards of Attorney Conduct. We are commenting as individuals. We have the following comments on the OCA's request for comments on the proposals of the N.Y. State Bar Association regarding the advertising rules and Rule 1.16.

I. Proposals to amend the advertising and solicitation rules (RPCs 1.0, 7.1, 7.2, 7.3 and 7.4)

We support the proposals to amend the advertising and solicitation rules to align them substantially with the ABA Model Rules. It is increasingly important for the public and the profession that the advertising rules be consistent and uniform. Consistent guidelines throughout the country will enable lawyers and law firms to comply with those rules in all jurisdictions reached or affected by their advertisements. The public will benefit similarly.

New York's current rules are broader than those in many other jurisdictions and our goals - to regulate the bar and protect the public - may be accomplished even if the black letter rules are streamlined, as the proposed changes provide.

II. Proposals to amend a lawyer's duties when accepting, declining or terminating representation (RPC 1.16)

The proposed changes to RPC 1.16 raise several concerns that we feel should be noted, notwithstanding their approval by NYSBA.

(1) Changing the term "representation" to "engagement".

The proposal changes the terms "representation" or "employment" to "engagement" at least 23 times. We question both the need for and the wisdom of this change. Throughout the Rules of Professional Conduct, the term "representation" is

used. While the term "engagement" is used 21 times throughout the Rules, the term "representation" is used far more (more than 300 times when we stopped counting). It is also used at the outset of the Rules in the first Comment to the Preamble, making it abundantly clear that the term encompasses the many types of legal representation in which lawyers engage with and for clients. For example, it includes representation in litigated matters; legal advice to individual and organizational clients seeking advice concerning the law and its application; negotiation; and a broad range of consultations that lawyers have with clients concerning their rights and obligations.

We disagree that the term "representation" is confusing and may be interpreted as applying solely to litigation. Further, if that were the case, it would make *no* sense to change "representation" to "engagement" only in this one rule.

(2) Moving Rule 1.16(c)(6) from permissive to mandatory withdrawal

The proposal eliminates the current permissive withdrawal provision (Rule 1.16(c)(6)), which permits a lawyer to withdraw if "the client insists upon presenting a claim or defense that is not warranted under existing law and cannot be supported by good faith argument for an extension, modification, or reversal of existing law." The new proposal provides for mandatory withdrawal if the client "seeks to use or persists in using the lawyer's services . . . to present a claim or defense that would be frivolous under Rule 3.1(b)(1)."

Despite the fact that proposed paragraph 1.16(a) describes the lawyer's risk assessment as being designed to modify a proposed representation, and despite the fact that Rule 3.1 prohibits the lawyer from taking an action the client has requested if it meets the definition of "frivolous" in Rule 3.1, proposed Rule 1.16(a)(1) requires the lawyer to withdraw from the representation, if the client requests the lawyer to take such action after a discussion with the client. We are concerned that proposed Rule 1.16 requires the lawyer to withdraw from representation at an earlier stage than under the current discretionary version of the Rule. Our greatest concern is that by diminishing a lawyer's discretion to determine whether or not withdrawal is required, we will not accomplish the goal of limiting lawyers' involvement in illegal and fraudulent activities by clients, but instead result in clients seeking alternative counsel. In our experience, lawyers can be most effective when they are able to give disinterested and at times negative advice to clients, to persuade them not to engage in conduct or activities that are illegal, fraudulent or not permitted by the Rules, which may take more than an initial consultation. The range of possible courses of conduct and proposed activities by clients is considerable. When lawyers become aware of possibly frivolous conduct or proposed conduct, they may render invaluable service to their clients by persuading and counseling them not to pursue such activities. A lawyer's discretion to decline to proceed or to move for permissive withdrawal can be highly persuasive in advising clients on proper courses of conduct. Making withdrawal mandatory in this situation would muddy the present standard, which grants lawyers the discretion to counsel wayward clients most effectively. A lawyer's discretion to determine the best way to address difficulties in the

lawyer-client relationship and how most effectively to serve clients who may be intent on courses of conduct that are inappropriate should be preserved and not undermined.

Finally, we are concerned that, if Rule 1.16(c)(6) is changed from a discretionary withdrawal rule to a mandatory one, a lawyer would be subject to unnecessary disciplinary risks based on the lawyer's good faith judgment in the midst of a difficult representation. For example, a lawyer may conclude that a client's proposed course of conduct is unmeritorious but that there is a good faith argument in support of the client's position. However, if a court disagrees and imposes sanctions against the lawyer or the client, the lawyer could also face disciplinary consequences for failing to withdraw from the representation. Moreover, in any subsequent disciplinary prosecution, the lawyer might be collaterally estopped from defending the decision to advance the client's position. That may make lawyers even more likely to be conservative when advising their clients on whether they have a good faith basis for arguing for a reversal or extension of existing law.

(3) Eliminating the language of the present "safe harbor" provision from Rule 1.16.

In Rule 1.16(a)(2), the proposal would change the standard from presenting a claim or defense in a matter that is not warranted under existing law, "unless it can be supported by a good faith argument for an extension, modification, or reversal of existing law" to presenting "a claim or defense in a matter that would be frivolous under Rule 3.1(b)(1)." The safe harbor has long been a part of the withdrawal rules – both in Rule 1.16(c)(6) and in DR 2-110(C)(1)(a) of the former Code of Professional Responsibility. Although the proposal incorporates the safe harbor by reference Rule 3.1(b)(1), which contains the standard for frivolous claims and defenses, we believe that adoption of this change is confusing and may result in lawyers believing that the exception no longer applies, and thus being more conservative in their advice to clients and prospective clients. We believe it is important that the safe harbor continue to be set forth in Rule 1.16, where lawyers are more likely to be looking for it.

(4) Changing the standard for withdrawal where the client seeks to harass or maliciously injure another.

Proposed Rule 1.16(a)(1)(i) requires the lawyer to withdraw from representation where the client engages in conduct that has "no substantial purpose" other than harassing or maliciously injuring another person, rather the current standard, which requires withdrawal if such conduct is "merely" for the purpose of harassing or maliciously injuring any person. In our opinion, this change is unwarranted. There is a significant difference between conduct that is "merely" for the purpose of harassing or maliciously injuring another (which we believe means "solely" for that purpose) and conduct that has one or more permitted purposes that are substantial. The higher standard will result in the lawyer being required to withdraw if the client is not immediately persuaded to drop the non-permitted conduct. Often, a client will have multiple purposes

for bringing a lawsuit. Requiring the lawyer to refuse a client matter or to withdraw immediately unless the client can be convinced after the first discussion that the lawyer is not permitted to engage in the conduct does not serve the interests of the client or the administration of justice. Similarly, as noted above in our comments to Rule 1.16(c)(6), exposing the lawyer to discipline for a subjective decision not to withdraw earlier in the representation might result in disproportionate disciplinary consequences.

(5) Adopting a "reasonable lawyer" standard for determining when discretionary withdrawal is permitted.

Current Rule 1.16(c) merely lists the circumstances when a lawyer has discretion to withdraw from a representation. Proposed Rule 1.16(c) allows discretionary withdrawal only where a "reasonable lawyer" would make the findings required by that section. COSAC argues that this objective standard is better than the existing subjective standard. We believe matters of withdrawal present difficult issues, and that lawyers should have wide latitude in judging the facts (such as when the client insists on taking action with which the lawyer disagrees or when the client fails to cooperate in the representation or otherwise renders the representation unreasonably difficult), and in exercising their discretion to determine whether withdrawal is appropriate.

Yours truly,

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Monica A. Duffy
Chief Attorney

CONFIDENTIAL

February 27, 2026

VIA: EMail

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Re: Request for Public Comment on a proposal to amend certain Rules of Professional Conduct relating to attorney advertising and solicitation

Dear Counsel Nocenti:

With respect to the above-referenced matter, please be advised that the Attorney Grievance Committee for the Third Judicial Department ("Committee") is in favor of the proposed changes and amendments to the Rules of Professional Conduct, Rules 7.1, 7.2, 7.3, 7.4, 1.0 and 1.16 relating to attorney advertising and solicitation and the duty of inquiry when accepting, declining or terminating an engagement as outlined in the Memoranda dated December 30, 2026, along with exhibits ("Memoranda").

Concerning the Rules 7.1, 7.2, 7.3, 7.4, 1.0 amendments, the Committee wholeheartedly supports and welcomes said amendments and applauds COSAC's efforts in this regard. The simplification of and broadening of the rules related to attorney advertising as proposed will aid attorneys in more easily understanding and implementing the rules and aid the Committee in its investigations. Additionally, related to the proposed Rule 7.3 amendment which deletes the current requirements of Rule 7.3(c)(1), filing of solicitations with the attorney disciplinary committees, the Committee expresses its appreciation to be relieved of this administrative burden.

Concerning the Rule 1.16 amendments, the Committee finds that the reasons articulated in the Memoranda support the amendments as proposed. With the addition of a "risk assessment"

requirement to proposed Rule 1.16(a), the Committee inquires whether the proposed rule imposes an additional duty for attorneys to maintain a writing or notes showing that they performed the required risk assessment, or an alternative duty, to establish a "best practice" in this regard. Perhaps, this inquiry will be answered in the proposed comments to the amendments, if any.

The Committee appreciates the opportunity to provide its comments on these matters.

Very truly yours,

Elena Jaffe Tastensen, Chair
Attorney Grievance Committee
Third Judicial Department
MAD/EJT/jrp