

CHAPTER 4 – MARKETING OF LEGAL SERVICES

4.1 MAKING LEGAL SERVICES AVAILABLE

Making Legal Services Available

4.1-1 A lawyer must make legal services available to the public efficiently and conveniently and, subject to subrule (2), may offer legal services to a prospective client by any means.

Commentary

[1] A lawyer may assist in making legal services available by participating in the Legal Aid Plan and lawyer referral services and by engaging in programs of public information, education or advice concerning legal matters.

[2] As a matter of access to justice, it is in keeping with the best traditions of the legal profession to provide services *pro bono* and to reduce or waive a fee when there is hardship or poverty or the client or prospective client would otherwise be deprived of adequate legal advice or representation. The Law Society encourages lawyers to provide public interest legal services and to support organizations that provide services to persons of limited means.

[3] Where a lawyer knows or has reasonable grounds to believe that a client is entitled to Legal Aid, the lawyer should advise the client of the right to apply for Legal Aid, unless the circumstances indicate that the client has waived or does not need such assistance.

[4] **Right to Decline Representation** - A lawyer has a general right to decline a particular representation (except when assigned as counsel by a tribunal), but it is a right to be exercised prudently, particularly if the probable result would be to make it difficult for a person to obtain legal advice or representation. Generally, a lawyer should not exercise the right merely because a person seeking legal services or that person's cause is unpopular or notorious, or because powerful interests or allegations of misconduct or malfeasance are involved, or because of the lawyer's private opinion about the guilt of the accused. A lawyer declining representation should assist in obtaining the services of another lawyer qualified in the particular field and able to act. When a lawyer offers assistance to a client or prospective client in finding another lawyer, the assistance should be given willingly and, except where a referral fee is permitted by section 3.6, without charge.

Restrictions

4.1-2 In offering legal services, a lawyer must not use means that:

- (a) are false or misleading;
- (b) amount to coercion, duress, or harassment;
- (c) take advantage of a person who is vulnerable or who has suffered a traumatic experience and has not yet had a chance to recover; or
- (d) otherwise bring the profession or the administration of justice into disrepute.

Commentary

[1] A person who is vulnerable or who has suffered a traumatic experience and has not recovered may need the professional assistance of a lawyer, and this rule does not prevent a lawyer from offering assistance to such a person. A lawyer is permitted to provide assistance to a person if a close relative or personal friend of the person contacts the lawyer for this purpose, and to offer assistance to a person with whom the lawyer has a close family or professional relationship. The rule prohibits the lawyer from using unconscionable, exploitive or other means that bring the profession or the administration of justice into disrepute.

4.2 MARKETING

Marketing of Professional Services

4.2-1 A lawyer may market professional services, provided that the marketing is:

- (a) demonstrably true, accurate and verifiable;
- (b) neither misleading, confusing, or deceptive, nor likely to mislead, confuse, or deceive;
- (c) in the best interests of the public and consistent with a high standard of professionalism.

Commentary

[1] Examples of marketing that may contravene this rule include:

- (a) stating an amount of money that the lawyer has recovered for a client or referring to the lawyer's degree of success in past cases, unless such statement is accompanied by a further statement that past results are not necessarily indicative of future results and that the amount recovered and other litigation outcomes will vary according to the facts in individual cases;
- (b) suggesting qualitative superiority to other lawyers;
- (c) raising expectations unjustifiably;
- (d) suggesting or implying the lawyer is aggressive;
- (e) disparaging or demeaning other persons, groups, organizations or institutions;
- (f) taking advantage of a vulnerable person or group; and
- (g) using testimonials or endorsements which contain emotional appeals.

Advertising of Fees

4.2-2 A lawyer may advertise fees charged for their services provided that:

- (a) the advertising is reasonably precise as to the services offered for each fee quoted;
- (b) the advertising states whether other amounts, such as disbursements and taxes, will be charged in addition to the fee; and
- (c) the lawyer strictly adheres to the advertised fee in every applicable case.

Firm Name

4.2-2A A lawyer must not use a firm name that violates subrule (1).

Commentary

[1] Examples of law firm names that are permissible include:

- (a) the lawyer's own name;
- (b) the names of existing, original or former partners and associates, or a combination of all three, provided the partners or associates have consented to the use of their names either by agreement or by inference through the long use of their name without objection;
- (c) a descriptive or trade name.

[2] Examples of law firm names that would contravene this rule include:

- (a) failing to include the words "law corporation" in the name of the professional corporation;
- (b) failing to include the phrase "limited liability partnership" or its abbreviation "LLP" at the end of a name of a Manitoba limited liability partnership;
- (c) including phrases or language such as "and Associates", "and Partners", "and Company", or "Attorneys-at-law" unless there are in fact two or more lawyers in the firm;
- (d) holding oneself out as a member of a firm when the lawyer shares office space and certain common expenses with other lawyers but otherwise practises as an independent practitioner.

4.3 ADVERTISING NATURE OF PRACTICE

General Practice

4.3-1 A lawyer or law firm may advertise that the lawyer or law firm is in general practice if such is the case.

Preferred and Restricted Areas of Practice

4.3-2 A lawyer may advertise that the lawyer has a preferred area of practice provided the advertisement does not contain a claim either directly or indirectly that the advertising lawyer is a specialist or expert.

4.3-3 A lawyer may advertise that the lawyer's practice is restricted to a particular area or areas of the law or may state that the lawyer practises in a certain area or areas of the law if such is the case.

Commentary

[1] Where a lawyer advertises in accordance with this rule, the advertisement should be designed to provide information to assist a potential client to choose a lawyer who has the appropriate skills and knowledge for the client's particular legal matter.

[2] A lawyer may advertise areas of practice if the representations made are accurate (that is, demonstrably true) and are not misleading. For example, a lawyer may list preferred areas of practice or one or more areas without comment, provided that the lawyer actually practises and is competent in those areas. Similarly, an advertisement that a lawyer's practice is restricted to a certain area of law must be supported by an actual restriction of the practice as long as the advertisement remains outstanding. The object of advertising practice areas is to provide information that facilitates an informed choice of counsel. A misrepresentation as to the experience or skill of a lawyer would improperly influence that decision.