

involvement in such organizations would be severely curtailed. It may be necessary in appropriate cases to reassure a client of the organization that the representation will not be affected by conflicting loyalties of a member of the board. Established, written policies in this respect can enhance the credibility of such assurances.

*Section 11.604* would encourage the efforts of practitioners to maintain and improve our legal system. This system should function in a manner that commands public respect and fosters the use of legal remedies to achieve redress of grievances. By reason of education and experience, practitioners are especially qualified to recognize deficiencies in the legal system and to initiate corrective measures therein. Thus, they should participate in proposing and supporting legislation and programs to improve the system, without regard to the general interests or desires of clients or former clients. Rules of law are deficient if they are not just, understandable, and responsive to the needs of society. If a practitioner believes that the existence or absence of a rule of law, substantive or procedural, causes or contributes to an unjust result, the practitioner should endeavor by lawful means to obtain appropriate changes in the law. This Rule expresses the policy underlying Canon 8 of the Code of Professional Responsibility of the American Bar Association that "A practitioner should assist in improving the legal system" through legislation. Practitioners employed by the Government may be subject to limits on their personal ability to propose legislation regarding the department or agency where they are employed. Accordingly, it is not intended that this Rule be enforced through disciplinary process.

Practitioners involved in organizations seeking law reform generally do not have a client-practitioner relationship with the organization. Otherwise, it might follow that a practitioner could not be involved in a bar association law reform program that might indirectly affect a client. See also § 11.102(b). For example, a practitioner specializing in patent law prosecution or litigation might be regarded as disqualified from participating in drafting revisions of rules governing that subject. In determining the nature and scope of participation in such activities, a practitioner should be mindful of obligations to clients under other Rules, particularly § 11.107. A practitioner is professionally obligated to protect the integrity of the program by making an appropriate disclosure within the

organization when the practitioner knows a private client might be materially benefited.

*Section 11.701* would govern all communications about a practitioner's services, including advertising. It is especially important that statements about a practitioner or the practitioner's services be accurate, since many members of the public lack detailed knowledge of legal matters. Certain advertisements such as those that describe the amount of a damage award, the practitioner's record in obtaining favorable verdicts, or those containing client endorsements, unless suitably qualified, have a capacity to mislead by creating an unjustified expectation that similar results can be obtained for others. Advertisements comparing the practitioner's services with those of other practitioners are false or misleading if the claims made cannot be substantiated.

*Section 11.701 and Advertising.* To assist the public in obtaining legal services, practitioners should be allowed to make known their services not only through reputation but also through organized information campaigns in the form of advertising. Advertising involves an active quest for clients, contrary to the tradition that a practitioner should not seek clientele. However, the public's need to know about legal services can be fulfilled in part through advertising. This need is particularly acute in the case of persons of moderate means who have not made extensive use of legal services. The interest in expanding public information about legal services ought to prevail over considerations of tradition.

*Section 11.701* would permit public dissemination of information concerning a practitioner's name or firm name, address, and telephone number; the kinds of services the practitioner will undertake; the basis on which the practitioner's fees are determined, including prices for specific services and payment and credit arrangements; a practitioner's foreign language ability; names of references and, with their consent, names of clients regularly represented; and other information that might invite the attention of those seeking legal assistance.

Questions of effectiveness and taste in advertising are matters of speculation and subjective judgment. Some state jurisdictions have had extensive prohibitions against television advertising, against advertising going beyond specific facts about a practitioner, or against "undignified" advertising. Television is now one of the most powerful media for getting

information to the public, particularly persons of low and moderate income; prohibiting television advertising, therefore, would impede the flow of information about legal services to many sectors of the public. Limiting the information that may be advertised has a similar effect.

This proposal is based on the premise that there might be no significant distinction between disseminating information and soliciting clients through mass media or through individual personal contact. In-person solicitation can, however, create additional problems because of the particular circumstances in which the solicitation takes place. *Section 11.701* prohibits in-person solicitation in circumstances or through means that are not conducive to intelligent, rational decisions.

*Sections 11.701 and 11.702, and paying others to recommend a practitioner.* A practitioner would be allowed to pay for advertising permitted by this section. See § 11.702(c). *Section 11.702* also would permit a practitioner to pay a not-for-profit lawyer referral service or legal service organization for channeling professional work to the practitioner. Thus, such a service or organization, other than the practitioner may advertise or recommend the practitioner's services. Likewise, a practitioner may participate in practitioner referral programs and pay the usual fees charged by such programs. However, special concerns arise when a practitioner is making payments to intermediaries, such as invention promoters, to recommend the practitioner's services to others. These concerns are particularly significant when the payments are not being made to a recognized or established agency or organization, such as a bar-organized practitioner referral program. In employing intermediaries, such as invention promoters, the practitioner is bound by all of the provisions of § 11.701. However, paragraphs (b)(4), and (b)(5) of § 11.701 contain provisions specifically relating to the use of intermediaries.

*Paragraph (b)(4) of § 11.701* imposes specific obligations on the practitioner who uses an intermediary to ensure that the potential client, who is the target of the solicitation, is informed of the consideration paid or to be paid by the practitioner to the intermediary, and any effect of the payment of such consideration on the total fee to be charged. The concept of payment, as incorporated in § 11.701(b)(4), includes giving anything of value to the recipient and is not limited to payments of money alone. For example, if an intermediary