

about the need for legal services, and about the qualifications of available practitioners, without subjecting the prospective client to direct in-person or telephone persuasion that may overwhelm the client's judgment.

A practitioner may not circumvent the Rules of Professional Conduct through the acts of another. *See* § 11.804(a). Accordingly, the provisions of § 11.804(a) may be violated by any solicitation by an intermediary invention promoter involving in-person or live telephone contact to solicit professional employment for a practitioner from a prospective client with whom the practitioner has no family or prior professional relationship when a significant motive is the pecuniary.

*Paragraph (c) of § 11.703* would require the words "Advertising Material" on the outside of the envelope, and at the beginning and end of any electronic or recorded communication. The use of general advertising and written and recorded communications to transmit information from practitioner to prospective client, including patent and trademark clients, rather than direct in-person or live telephone contact, will help to assure that the information flows clearly as well as freely. The contents of advertisements and communications permitted under § 11.702 are permanently recorded so that they cannot be disputed and may be shared with others who know the practitioner. 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 § 11.701. The contents of direct in-person or live telephone conversations between a practitioner to a prospective client can be disputed and are not 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 practitioner would engage in abusive practices against an individual with whom the practitioner has a prior personal or professional relationship or where the practitioner is motivated by considerations other than the practitioner's pecuniary gain. Consequently, the general prohibition in § 11.703(a) and the requirements of § 11.703(c) would not be applicable in those situations.

But even permitted forms of solicitation can be abused. Thus, any solicitation which contains information

which is false or misleading within the meaning of § 11.701, which involves coercion, duress or harassment within the meaning of § 11.703(b)(2), or which involves contact with a prospective client who has made known to the practitioner a desire not to be solicited by the practitioner within the meaning of § 11.703(b)(1) would be prohibited. Further, if after sending a letter or other communication to a client as permitted by § 11.702 the practitioner receives no response, any further effort to communicate with the prospective client may violate the provisions of § 11.703(b). Likewise, if a solicitation on a practitioner's behalf by an intermediary contains false or misleading information within the meaning of § 11.701, the solicitation may violate the provisions of § 11.804(a). Similarly, any solicitation by an intermediary invention promoter involving follow-up telephone calls to prospective clients who have not responded to an initial solicitation may violate the provisions of § 11.804(a).

Section 11.703 is not intended to prohibit a practitioner from contacting representatives of inventor-run organizations or groups that may be interested in establishing a group or prepaid legal plan for their members, or insureds for the purpose of informing such entities of the availability of and details concerning the plan or arrangement which the practitioner or the practitioner's firm is willing to offer. This form of communication is not directed to a prospective client. 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 practitioner. Under these circumstances, the activity which the practitioner 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 § 11.702.

The requirement in § 11.703(c) 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 practitioners, 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 section.

*Paragraph (d) of § 11.703* would permit, in conformity with Rules of Professional Conduct adopted by state

bars, a lawyer to participate with an organization which uses personal contact to solicit members for its group or prepaid legal service plan, provided that the personal contact is not undertaken by any practitioner who would be a provider of legal services through the plan. The organization referred to in paragraph (d) must not be owned by or directed (whether as manager or otherwise) by any practitioner 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 practitioner and use the organization for the in-person or telephone solicitation of legal employment of the practitioner 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 be designed to inform potential plan members generally of another means of affordable legal services. Practitioners who participate in a legal service plan must reasonably assure that the plan sponsors are in compliance with §§ 11.701, 11.702, and 11.703(b). *See* § 11.804(a).

*Section 11.704* would permit a practitioner to indicate areas of practice in communications about the practitioner's services. If a practitioner practices only in certain fields, or will not accept matters except in a specified field or fields, the practitioner is permitted to so indicate. A practitioner is generally permitted to state that the practitioner is a "specialist," practices a "specialty," or "specializes in" particular fields, but such communications are subject to the "false and misleading" standard applied in § 11.701 to communications concerning a practitioner's services.

However, a practitioner may not communicate that the practitioner has been recognized or certified as a specialist in a particular field of law, except as provided by this section.

*Paragraph (a) of § 11.704* would continue the provisions of current § 10.31(c) proscribing a non-lawyer, *e.g.*, a patent agent, from holding himself/herself out as an attorney, lawyer, or member of a bar; or as authorized to practice before the Office in trademark matters unless authorized by § 11.14(b).

*Paragraph (b) of § 11.704* would continue the provisions of current § 10.34(b) permitting a registered practitioner who is an attorney to use the designation "Patents," "Patent Attorney," "Patent Lawyer," "Registered Patent Attorney," or a substantially similar designation.