DISTRICT OF COLUMBIA BAR

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D.C. BAR TORT LAW SECTION RE PROPOSED REVISION TO RULE 7.1 OF THE RULES OF PROFESSIONAL CONDUCT

The Tort Law Section[1] of the District of Columbia Bar has convened a task force which is proposing a revision to Rule 7.1 of the Rules of Professional Conduct. The task force has developed a proposed amendment to Rule 7.1 of the Rules of Professional Conduct.

Rule 7.1 presently permits direct client solicitation and the use of paid runners for obtaining new clients.

This practice is not authorized in most other jurisdictions and creates many problems for prospective clients in being able to select counsel in a deliberate and considered manner. Although this practice is most prevalent in the area of personal injuries, it also occurs in other areas where clients are in need of legal representation.

[1] Steering Committee of the Tort Law Section: Paulette E. Chapman, Jonathan E. Halperin, Deborah K. Hines, D'Ana Johnson, Frank R. Kearney, Adam R. Leighton, Samuel M. Shapiro, Salvatore J. Zambri, and Lesley S. Zork. . The views expressed in the comment letter represent only those of the Tort Law Section and not those of the District of Columbia Bar or of its Board of Governors.

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Public Statement of the D.C. Bar Tort Law Section on Modifying Rule 7.1 of the Rules of Professional Conduct

The Tort Law Section[1] of the District of Columbia Bar, consisting of a cross-section of plaintiff and defense attorneys, strongly supports a modification of Rule 7.1 of the Rules of Professional Conduct for the District of Columbia. Specifically, our Section encourages a rule change so as to prohibit direct client solicitation and the use of paid runners--practices that are already banned in the vast majority of jurisdictions throughout this country, including the neighboring jurisdictions of Maryland and Virginia--but remain permissible here.

Our Section recognizes unequivocally that there has been rampant solicitation of potential plaintiffs in automobile tort cases in the District of Columbia. Although Rule 7.1 was purportedly promulgated so that clients can be made aware of the availability of legal services, that purpose is no longer furthered by the rule in any meaningful way. Instead, in our view, the rule has fostered behavior that has rendered a significant disservice to the public and has grossly demeaned the Bar. For instance, it is clear to our Section that runners freely disparage other lawyers, routinely harass potential clients by calling at very early hours of the morning, and make false promises in an effort to secure cases. These are only a few of the oft-repeated examples of conduct engaged in by runners that harm the Bar and render a disservice to the citizens of this great city.

We strongly believe that merely modifying the Rule to bar the use of runners would be insufficient. Our Sections supports an amendment that further prohibits direct client solicitation by lawyers. The same problems generated by the use of runners are equally present when lawyers engage in direct client solicitation. In fact, it can be argued that such conduct by lawyers promotes even greater adverse consequences. Attorneys should be held in great esteem in our free society. It is likely that the common ills attendant to direct client solicitation denigrate the reputation of lawyers more than the use of runners. Consequently, we believe that attorneys, as officers of the court, should be barred from such behavior.

When Rule 7.1 was enacted, it was much more difficult for the general public to appreciate the availability of lawyers who could advance their interests. The Internet, for example, had not yet been invented and television advertising was at a minimum. With the advent of the Internet, widespread television advertising, and other effective forms of communication through the media, our Section firmly believes citizens of this city are keenly aware of the availability of lawyers.

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[1] Steering Committee of the Tort Law Section: Paulette E. Chapman, Jonathan E. Halperin, Deborah K. Hines, D'Ana Johnson, Frank R. Kearney, Adam R. Leighton, Samuel M. Shapiro, Salvatore J. Zambri, and Lesley S. Zork.

Accordingly, modification of the rule will not undermine the purpose it intended to advance. What it would do, on the other hand, is free our citizens of harassment and allow the justice system to effectively combat the negative stereotypes that have developed because of the actions of runners and direct client solicitation. Our Section echoes the opinion of the United States Supreme Court in Ohralik v. Ohio State Bar Association, 436 U.S. 447 (1978), when the Court acknowledged that in-person solicitation is "a practice rife with possibilities for overreaching, invasion of privacy, the exercise of undue influence and outright fraud." Recently, this viewpoint has been adopted in the comments that accompany the ABA Model Rules of Professional Conduct[2], which notes that "the potential for abuse inherent in direct in-person or telephone solicitation of prospective clients justifies its prohibition."

For all of these reasons, as well as numerous other reasons which our Steering Committee members would be happy to discuss with you, we believe Rule 7.1 should be modified, prohibiting direct client solicitation and the use of paid runners.

Authors and Contributors to this Statement:

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Disclaimer: This public statement is intended to reflect the views of the Tort Law Section of the District of Columbia Bar, and not necessarily the views of the entire Bar.

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[2] *See* Rule 7.3, Comment 2.