

**JOINT ORDER OF THE DEPARTMENTS  
OF THE APPELLATE DIVISION**

The Departments of the Appellate Division of the Supreme Court, pursuant to the authority vested in them, do hereby amend, effective January 1, 2017, Rules 1.0(x), 1.6(c), 1.18, 4.4(b) and 7.3 of Part 1200 of Title 22 of the Official Compilation of Codes, Rules and Regulations of the State of New York, entitled "Rules of Professional Conduct," as follows:

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**§ 1200.0 Rules of Professional Conduct**

Rule 1.0. Terminology

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(x) " Writing" or "written" denotes a tangible or electronic record of a communication or representation, including handwriting, typewriting, printing, photocopying, photography, audio or video recording, and e-mail **or other electronic communication or any other form of recorded communication or recorded representation.** A "signed" writing includes an electric sound, symbol or process attached to or logically associated with a writing and executed or adopted by a person with the intent to sign the writing.

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Rule 1.6. Confidentiality of Information

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~~(c) A lawyer shall exercise reasonable care to prevent the lawyer's employees, associates, and others whose services are utilized by the lawyer from disclosing or using confidential information of a client, except that a lawyer may reveal the information permitted to be disclosed by paragraph (b) through an employee.~~ **make reasonable efforts to prevent the inadvertent or unauthorized disclosure or use of, or unauthorized access to, information protected by Rules 1.6, 1.9(c), or 1.18(b).**

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Rule 1.18. Duties to Prospective Clients

(a) A **Except as provided in Rule 1.18(e),** a person who discusses **consults** with a lawyer **about** the possibility of forming a client-lawyer relationship with respect to a matter is a "prospective client".

(b) Even when no client-lawyer relationship ensues, a lawyer who has ~~had discussions with~~ **learned information from** a prospective client shall not use or reveal **that** information learned ~~in the consultation~~, except as Rule 1.9 would permit with respect to information of a former client.

\* \* \*

(e) A person who **is not a prospective client within the meaning of paragraph (a) if the person:**

(1) communicates information unilaterally to a lawyer, without any reasonable expectation that the lawyer is willing to discuss the possibility of forming a client-lawyer relationship; or

(2) communicates with a lawyer for the purpose of disqualifying the lawyer from handling a materially adverse representation on the same or a substantially related matter; ~~is not a prospective client within the meaning of paragraph (a).~~

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#### Rule 4.4 Respect for Rights of Third Persons

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(b) A lawyer who receives a document, **electronically stored information, or other writing** relating to the representation of the lawyer's client and knows or reasonably should know that ~~the document~~ **it** was inadvertently sent shall promptly notify the sender.

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#### Rule 7.3 Solicitation and Recommendation of Professional Employment

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(b) For purposes of this Rule, "solicitation" means any advertisement initiated by or on behalf of a lawyer or law firm that is directed to, or targeted at, a specific recipient or group of recipients, or their family members or legal representatives, the primary purpose of which is the retention of the lawyer or law firm, and a significant motive for which is pecuniary gain. It does not include a proposal or other writing prepared and delivered in response to a specific request ~~of a prospective client.~~

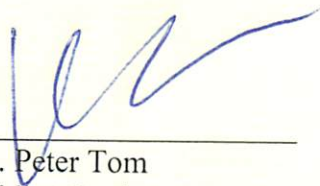
(c) A solicitation directed to a recipient in this State shall be subject to the following provisions:

\* \* \*

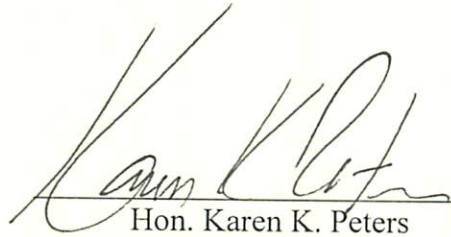
(5) The provisions of this paragraph shall not apply to ...

(ii) a web site maintained by the lawyer or law firm, unless the web site is designed for and directed to or targeted at a prospective client persons affected by an identifiable actual event or occurrence or by an identifiable prospective defendant; or

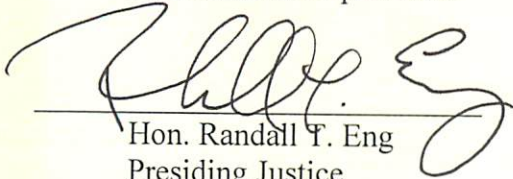
\* \* \*



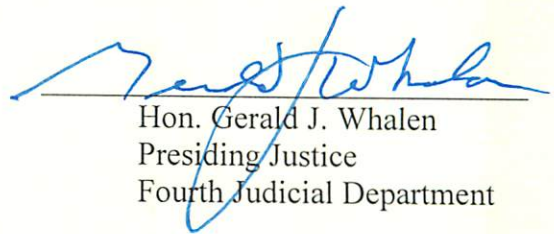
Hon. Peter Tom  
Presiding Justice  
First Judicial Department



Hon. Karen K. Peters  
Presiding Justice  
Third Judicial Department



Hon. Randall T. Eng  
Presiding Justice  
Second Judicial Department



Hon. Gerald J. Whalen  
Presiding Justice  
Fourth Judicial Department

Dated: November 10, 2016