

Final

**Rhode Island Supreme Court  
Ethics Advisory Panel  
Opinion No. 2001-01 Request No. 819  
Issued March 8, 2001**

Facts:

The inquiring attorney plans to establish a consulting business which will offer services related to employment law.<sup>1</sup> As principal of this business, the inquiring attorney intends to hold himself/herself out as a lawyer concentrating in employment law, and to provide legal services related to administrative hearings such as hearings before the human rights commission. In addition, this business will offer other services to employers such as the following: legal audits to ensure that employers are in compliance with federal and state laws and regulations; personnel training regarding compliance; reviewing and drafting employee manuals and agreements; and conducting internal investigations. No other professionals will be involved in the business as owners, partners, managers or employees.

Part of the inquiring attorney's marketing strategy is to send mailings of flyers, brochures, and similar materials advertising the business' services to companies that are currently or have been previously the subject of complaints filed with the Rhode Island Commission for Human Rights (RICHR) or the Equal Employment Opportunity Commission (EEOC).

Issue Presented:

The inquiring attorney asks whether sending mailings to companies that have had past or have pending matters before the RICHR or the EEOC is a violation of Rule 7.3(b)(2)(a) of the Rules of Professional Conduct.

Opinion:

Rule 7.3(b)(2)(a) prohibits the inquiring attorney from sending direct-mail solicitations to employers that are represented by counsel on matters pending before the RICHR or the EEOC. The inquiring attorney may send direct-mail solicitation to employers that have had prior matters before those agencies, and to employers that are not represented by counsel on matters currently pending before those agencies, provided the inquiring attorney complies with the labeling and filing requirements of Rule 7.3(b)(1).

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<sup>1</sup> The inquiring attorney states that the business will operated as a corporation. The Panel advises him/her that the practice of law in corporate form is governed by Rule 10 of the Supreme Court Rules on Admission of Attorneys and Others to Practice Law.

Reasoning:

The Rules of Professional Conduct govern the inquiring attorney's conduct with respect to the consulting business and all the services that will be offered. The inquiring attorney proposes to offer to a targeted population an array of services that are related to the area of employment law. Even though the inquiring attorney will provide some services as a consultant, *viz.*, conducting legal audits, compliance training, reviewing and drafting employee manuals, and conducting internal investigations, he/she also intends to hold himself/herself out as an attorney in this business. Therefore, he/she must abide by the Rules of Professional Conduct. See R.I. Sup. Ct. Ethics Advisory Panel Op. 93-54 (1993).

Rule 7.3 sets forth the parameters for solicitation of prospective clients. With the exception of situations delineated in Rule 7.3(b)(2), direct-mail solicitation is permitted subject to the labeling and filing requirements of Rule 7.3(b)(1). In pertinent part, Rule 7.3(b) states as follows:

(b) Written communication.

(1) Written communication to prospective clients with whom the lawyer has no family or prior professional relationship are subject to the following requirements:

(a) Such written communications shall be plainly marked "advertisement" on the face of the envelope and at the top of each page of the written communication in type one size larger than the largest type used in the written communication.

(b) A copy of each such written communication shall be sent to the Supreme Court Disciplinary Counsel and another copy shall be retained by the lawyer for three (3) years. If written communications identical in content are sent to two (2) or more prospective clients, the lawyer may comply with this requirement by sending a single copy together with a list of the names and addresses of persons to whom the written communication was sent to the Supreme Court Disciplinary Counsel as well as retaining the same information.

(2) A lawyer shall not send, or knowingly permit to be sent, on behalf of the lawyer, the lawyer's firm, the lawyer's partner, an associate, or any other lawyer affiliated with the lawyer or the lawyer's firm a written communication to any prospective client for the purpose of obtaining professional employment if:

(a) The written communication concerns a specific matter and the lawyer knows or reasonably should know that the person to whom the communication is directed is represented by a lawyer;

Accordingly, the Panel concludes:

(1) The inquiring attorney is prohibited by Rule 7.3(b)(2)(a) from sending direct-mail solicitations, including flyers, brochures, letters, and other materials that advertise his/her services, to employers that are represented by counsel on matters pending before the RICHR or the EEOC.

(2) The Rules permit the inquiring attorney to send direct-mail solicitations to employers that are not represented in pending matters before those agencies, and to employers who have had prior matters before the agencies. The solicitation is subject to the filing and labeling requirements of Rule 7.3(b)(1).

As with all communications concerning a lawyer's services, such written communications to prospective clients are also subject to Rule 7.1 (a lawyer shall not make a false or misleading statement about the lawyer or the lawyer's services), Rule 7.4 (a lawyer may not indicate that he/she concentrates in an area of law without stating that Court does not license or certify specialists), and Rule 7.5 (regarding firm names, letterhead, and the use of trade names.)