

Final

**Rhode Island Supreme Court
Ethics Advisory Panel Op. 2024-01
Issued February 8, 2024**

FACTS

The inquiring attorney works for a law firm concentrating in the areas of elder law, estate planning, and guardianships. Consequently, the firm's clientele tends toward senior citizens and persons with special needs.

The inquiring attorney reports that he or she is personally interested in local housing issues. At a recent community service event, the inquiring attorney and the director of the local land trust discussed organizing a civic panel of interested stakeholders and professionals to address the need for additional housing for senior citizens and other groups in the inquiring attorney's hometown, against competing interests such as conserving open space and preserving home values. Panelists would include a former town councilwoman, a member of the Rhode Island Association of Realtors, the director of Village Common Rhode Island (a senior citizen advocacy group), a representative from a special needs advocacy group, and the head of the Rhode Island Land Trust Council.

The inquiring attorney wishes to help organize and/or moderate the proposed panel in his or her role as an interested private citizen, not as an attorney seeking pecuniary gain. Accordingly, the inquiring attorney states that he or she would not introduce him or herself as an attorney, market his or her law firm's services, provide legal advice, or attempt to solicit clients from the among panelists or attendees.

ISSUE PRESENTED

The inquiring attorney asks whether he or she may help organize and/or moderate the proposed panel without violating the Rules of Professional Conduct?

OPINION

It is the Panel's opinion that the inquiring attorney may help organize and moderate the proposed panel without violating the Rules of Professional Conduct.

REASONING

Issues pertaining to direct contact with prospective clients are governed by Rule 7.3:

- (a) A lawyer shall not by in-person, live telephone or real-time electronic contact solicit professional employment from a prospective client when a significant motive for the lawyer's doing so is the lawyer's pecuniary gain, unless the person contacted:

- (1) is a lawyer;
- (2) has a family, close personal, or prior professional relationship with the lawyer; or
- (3) is a business organization, a not-for-profit organization, or governmental body and the lawyer seeks to provide services related to the organization.

(b) A lawyer shall not solicit professional employment from a prospective client by written, recorded or electronic communication or by in-person, telephone or real-time electronic contact even when not otherwise prohibited by paragraph (a), if:

- (1) the prospective client has made known to the lawyer a desire not to be solicited by the lawyer;
- (2) the solicitation involves coercion, duress or harassment;
- (3) the communication contains a false, fraudulent, misleading or deceptive statement or claim or is improper under Rule 7.1;
- (4) the lawyer knows or reasonably should know that the physical, emotional, or mental state of the person makes it unlikely that the person would exercise reasonable judgment in employing a lawyer; or
- (5) the 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 in the matter.

(c) Every written, recorded or electronic communication from a lawyer soliciting professional employment from a prospective client known to be in need of legal services in a particular matter shall include the words "Advertising Material" on the outside envelope, if any, and at the beginning and ending of any recorded or electronic communication, unless the recipient of the communication is a person specified in paragraphs (a)(1), (a)(2), or (a)(3).

(d) A copy of each such communication shall be sent to the Supreme Court Disciplinary Counsel and another copy shall be retained by the lawyer for three (3) years. If 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 personal to whom the communication was sent to the Supreme Court Disciplinary Counsel as well as retaining the same information.

(e) Notwithstanding the prohibitions in paragraph (a), a lawyer may participate with a prepaid or group legal service plan operated by an organization not owned or directed by the lawyer that uses in-person or telephone contact to solicit memberships or subscriptions for the plan from persons who are not known to need legal services in a particular matter covered by the plan.

In this case, the inquiring attorney works for a law firm concentrating in the areas of elder law, estate planning, and guardianships, such that its clientele tends to encompass senior citizens and persons with special needs. The proposed panel would address local housing issues pertaining to these same groups, such that they are likely to comprise a significant portion of the proposed panel's audience. Therefore, there exists a substantial likelihood that the inquiring attorney will come into direct contact at the proposed panel with individuals who may be potential clients. This situation is of the type Rule 7.3(a) generally seeks to prohibit. See Comment [1] to Rule 7.3 (explaining that “[t]here is a potential for abuse inherent in direct in-person . . . contact by a lawyer with a prospective client known to need legal services The situation is fraught with the possibility of undue influence, intimidation, and over-reaching”).

However, the risks of abuse normally inherent in direct in-person contact with potential clients are undercut by two (2) interrelated facts here. First, the inquiring attorney has indicated that he or she would organize and moderate the proposed panel solely in his or her capacity as an interested private citizen, not as an attorney seeking pecuniary gain—thereby removing one of the key prerequisites for Rule 7.3(a)'s applicability. See Comment [4] to Rule 7.3 (clarifying that “[t]here is far less likelihood that a lawyer would engage in abusive practices against an individual . . . in situations in which the lawyer is motivated by considerations other than the lawyer's pecuniary gain,” such that “the general prohibition in Rule 7.3(a) . . . [is] not applicable in those situations”).

Second, in this vein the inquiring attorney asserts that he or she would not introduce him or herself as an attorney, market his or her law firm's services, provide legal advice, or attempt to solicit clients from the among panelists or attendees. As the Panel has noted in previous opinions, direct contact between attorneys and potential clients otherwise prohibited under Rule 7.3(a) may be permissible in the absence of affirmatively solicitous conduct. See, e.g., Rhode Island Ethics Advisory Panel Opinion 92-55 (permitting the inquiring attorney to “provide legal seminars to clients and non-clients so long as neither the seminar brochures nor the presentation itself contains a recommendation that the firm be employed for legal representation”).

The Panel finds that these two (2) facts, taken together, ameliorate the risks of direct in-person contact that Rule 7.3(a) seeks to avoid. Therefore, the inquiring attorney helping to organize and moderate the proposed panel is permissible.