

DIGEST OF ETHICS ADVISORY PANEL
Opinion #88-29, Request #38
Issued January 12, 1989

An attorney requests Panel reconsideration of Advisory Opinion 88-22 issued to him September 22, 1988. In Advisory Opinion 88-22 the Panel advised the attorney that the sample letters he submitted constituted a form of targeted solicitation prohibited by DR 2-103(A) of the Code of Professional Responsibility. The Panel also took the position that although the United States Supreme Court's holding in Shapiro v. Kentucky Bar Association appeared to conflict with DR 2-103(A), the Panel was only empowered to apply the Code as adopted by the Rhode Island Supreme Court.

The Rhode Island Supreme Court adopted the Model Rules of Professional Conduct, effective November 15, 1988, rendering moot any question of the scope or constitutionality of DR 2-103(A). Rule 7.3 of the Rules of Professional Conduct provides:

(a) A lawyer may not solicit professional employment from a prospective client with whom the lawyer has no family or prior professional relationship, in person or otherwise, when a significant motive for the lawyer's doing so is the lawyer's pecuniary gain. The term "solicit" includes contact in person, by telephone or telegraph, or by other communication directed to a specific recipient and includes any written form of communication directed to a specific recipient and not meeting the requirements of paragraph (b) of this rule.

Paragraph (b) first sets forth two specific requirements for written communications:

(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

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Disciplinary Counsel as well as retaining the same information.

Second, Paragraph (b) sets forth the five situations in which a lawyer may not send a written communication to a prospective client. Paragraph 7.3(b)(2)(e) provides:

(e) 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.

The Panel takes the position that the sample letters the attorney submitted for Panel review do not meet the requirements of Rule 7.3(b)(1) and violate the clear prohibition of Rule 7.3(b)(2)(e).

Ethics Advisory Panel advice is protective in nature. There is no requirement that an attorney abide by a Panel opinion, but if he or she does, he or she is fully protected from any charge of impropriety.