

DIGEST OF ETHICS ADVISORY PANEL  
OPINION 90-15, REQUEST #90  
Issued February 27, 1990

An attorney seeks Panel advice as to whether he may properly send a certain letter advertising his legal services to people he does not know who he describes as homeowners aged 65 or older.

The attorney submits a sample copy of the letter he proposes to send for Panel review. The word "Advertisement" is centered on the page, above the text of the letter. The letter first asks if the recipient is aware of certain pertinent aspects of the law, and then inquires if the recipient is concerned about the effect on his or her life or on his or her estate. The letter then states that the attorney's office "has a special interest in this area of law" and notes that the office advises many clients in this area. The letter closes by suggesting that the recipient may call the attorney's office number and receive a free initial consultation.

As a threshold matter, the Panel is not equipped to "embark on the task of editing" documents, and therefore cannot give general approval to a document as a whole. See, e.g. Digest of Ethics Advisory Panel Opinion 87-3. For purposes of rendering this advisory opinion, the Panel assumed that all factual assertions in the attorney's letter are accurate.

Rule 7.3, titled "Direct contact with Prospective Clients" provides that an attorney must comply with the requirements of Rule 7.3(b) when communicating, in writing, with a prospective client. The rule provides exceptions, not applicable here, for situations in which the attorney either has a pre-existing professional or familial relationship with the prospective client or when the communication is part of an effort pro bono publico which will not result in pecuniary gain. Rule 7.3(b) provides:

(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 in the matter;

(b) It has been made known to the lawyer that the person does not want to receive such communications from the lawyer;

(c) The communication involves coercion, duress, fraud, overreaching, harassment, intimidation, or undue influence;

(d) The communication contains a false, fraudulent, misleading, or deceptive statement or claim or is improper under Rule 7.1;

(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 word "Advertisement" at the top of the letter and on the face of the envelope must be in "larger" print in compliance with Rule 7.3(b)(1)(a). With the exception of this change, the Panel takes the position that the letter the attorney has submitted is proper under the Rules of Professional Conduct.

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.