

DIGEST OF ETHICS ADVISORY PANEL
OPINION #90-18, REQUEST #92
Issued May 31, 1990

An attorney seeks Panel advice as to whether she can properly send a letter advertising her legal services to business owners she does not know.

The attorney submits a sample copy of the letter she proposes to send. The word "Advertisement" appears in capitals in the upper left hand corner of the letter. The type used is different from the type used in the body of the letter, and is the same size as the largest type used in the body of the letter. The letter first makes some general observations about a business's financial concerns. This is followed by the statement that the attorney's firm "emphasizes collections and bankruptcies" and knows the area "inside and out." The letter does not make any comparisons between the inquiring attorney's firm and any other. The letter closes by inviting its recipient to return an enclosed postcard or to telephone the office. The attorney asks the Panel whether she may properly send this letter under the Rules of Professional Conduct.

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 advisory opinion 87-3. For purposes of rendering this advisory opinion, the Panel assumed that all factual assertions in the letter are accurate. The following Rules of Professional Conduct are applicable to this situation.

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 has either a pre-existing professional 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 type one size larger than the largest type used in the written communication.

Rule 7.4 provides:

Communications of Fields of Practice. -- A lawyer may communicate the fact that the lawyer does or does not practice in particular fields of law. A lawyer may not, however, indicate that his or her practice is limited to or concentrated in particular fields of law unless, as part of the same communication, the lawyer also indicates that Rhode Island does not have a procedure for certification or recognition of specialization by lawyers. A lawyer shall not state or imply that the lawyer is a specialist except as follows:

(a) a lawyer admitted to engage in patent practice before the United States Patent and Trademark Office may use the designation "Patent Attorney," or a substantially similar designation; or

(b) a lawyer engaged in Admiralty practice may use the designation "Admiralty," "Proctor in Admiralty" or a substantially similar designation.

Rule 7.4 expressly permits an attorney to indicate the fact that he or she does or does not practice in particular fields of law. However Rule 7.4 also expressly prohibits a lawyer from implying that he or she is a specialist. Therefore, in order to clearly meet the requirements of Rule 7.4 and obtain Panel protection the attorney must include the specified disclaimer set forth in the rule to the effect that no procedure exists in Rhode Island for the certification or recognition of specialization by lawyers.

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.