

ETHICS ADVISORY PANEL
Opinion #92-57, Request #280
Issued July 23, 1992

An attorney seeks Panel advice regarding the ethical propriety of offering consulting services to a municipality. The attorney read in a newspaper that a municipality contemplated hiring a zoning consultant. The attorney, who is familiar with the subject matter, decided to offer consultation services to the municipality and others as well. The attorney inquires as to whether the consulting services constitute the practice of law and therefore require the attorney to conform with the Rules of Professional Conduct, specifically Rule 7.3.

The Panel believes that Rule 7.3 entitled "Direct Contact with Prospective Clients" address this inquiry. The Rule states that:

(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 . . .

There is a potential abuse inherent in direct solicitation by a lawyer of prospective clients known to need legal services. It subjects the layperson to the private importuning of a trained advocate, in a direct interpersonal encounter. The situation is fraught with the possibility of undue influence, intimidation, and overreaching. (See, Comments to Rule 7.3). The Panel believes that the attorney must comply with Rules 7.3(b) and 7.4. Rule 7.3(b), entitled "Written Communication" is applicable when mailing letters directly to prospective clients with whom the attorney has no family or prior professional relationship. The rule states that:

(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.

Equally applicable to this inquiry is Rule 7.4 entitled "Communication of Fields of Practice." The Rule states that an attorney may not state to the public that his or her practice is limited to a particular field of law unless the attorney also indicates "that Rhode Island does not have a procedure for certification or recognition of specialization by lawyers."

The attorney asks whether the attorney's conduct must comply with the Rules of Professional Conduct. The Panel believes that an attorney must at all times comply with all applicable rules whether or not he/she is acting

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in a professional capacity. It is generally recognized that attorneys are subject to discipline for improper conduct in connection with business activities, personal activities and activities as a judicial, governmental or public official. See, ABA Formal Opinion 336 (6/3/74). It is well settled that an attorney is bound by applicable rules of professional conduct whether or not he or she is acting in a professional capacity. See, Ethics Advisory Opinion 90-22.