

ETHICS ADVISORY PANEL  
Opinion #92-79, Request #307  
Issued December 9, 1992

An attorney seeks Panel advice regarding the following circumstances. Attorney A was contacted by an out of state attorney, Attorney B, with a business proposition. Attorney B would provide a list of names and addresses of people who are entitled to monies and/or property from a particular state. Attorney A would send letters informing them that a Client of A's (Attorney B) had discovered monies/property which they may be entitled to. Also enclosed in the letter would be a contingency fee agreement which B would receive a one-third share of any monies/property recovered. They were instructed to sign the agreement, mail it to Attorney A and Attorney A would contact them with specific information. Attorney A would be compensated a minimal fee for this service. Attorney A asks whether such conduct is ethically appropriate.

It appears from the facts presented that the letter from Attorney A is or may be construed by the letter's recipients as a direct solicitation of legal services. 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, R.I.Ethics Advisory Opinion 90-22.

The Panel believes that Rule 7.3 entitled "Direct Contact with Prospective Clients" addresses 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 . . .

Rule 7.3 (b) (1) 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.

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.