

ETHICS ADVISORY PANEL
Opinion #93-22, Request #355
Issued May 12, 1993

The inquiring attorney was previously special counsel for a state agency. The attorney's duties included various stages of litigation of condemnation matters. The attorney informs the Panel that he/she has refrained from dealing with this agency for over a year and desires to represent plaintiffs in condemnation proceedings.

The attorney asks whether Rule 7.3 would be violated if the attorney sent notice or mailings to potential clients (their names obtained from the public land records) citing the prior experience with the state agency for this particular area of law. The attorney states that all envelopes and letters will be marked "advertisement" and that Rule 7.4's disclaimer which states that Rhode Island does not have a procedure for certification or recognition of specialization by lawyers will be clearly stated.

The Panel is in agreement that Rule 7.3 entitled "Direct Contact with Prospective Clients" must be followed. 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 and includes any written form of communication directed to a specific recipient and not meeting the requirements of paragraph (b) of this rule.

(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 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.

As a threshold matter, the Panel is not equipped to "embark on the task of editing" documents, and cannot give general approval to a document as a whole. See, Ethics Advisory Panel Opinion #90-15. The reference in the proposed advertisement citing the attorney's prior experience with a state agency will not violate the Rules of Professional Conduct as long as the attorney adheres to the criteria set forth in Rule 7.3(a) and (b).

In addition, the Panel cautions the attorney to follow Rule 1.11 entitled "Successive Government and Private Employment." The inquiring attorney may not represent a private client in connection with a matter in which he/she participated as a public employee. See, Rule 1.11.