

Final

ETHICS ADVISORY PANEL  
OPINION # 95-45, - REQUEST # 612  
ISSUED - OCTOBER 12, 1995

The inquiring attorney is employed by a law firm that seeks to mail letters to businesses with whom the firm has no family or prior professional relationship. The inquiring attorney would meet with the businesses, free of charge, to discuss legal issues affecting the business. The letter would be sent alone without brochures or pamphlets.

The primary motivation for this letter is to obtain experience in public speaking and to inform businesses of critical legal issues. The inquiring attorney asks whether the letter could be sent without labeling "advertisement" and whether the firm could contact the business after the letter is received to schedule a meeting.

The Rules of Professional Conduct mandate specific criteria regarding advertisement by attorneys. The Rules protect the public from being misled or coerced by an attorney's conduct.

Rule 7.3 entitled "Direct Contact with Prospective Clients" is applicable to this particular inquiry because it addresses direct solicitation made by attorneys. That rule states in pertinent part:

(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 on 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.

If an attorney is going to communicate in the manner described herewith, a prospective client as to whom the lawyer has no prior relationship with, then the written communication must be labeled accordingly as set forth in subsection (b) (1) and (2). Although the letter would not request employment from the business, the letter is still considered to be a solicitation according to Rule 7.3. The inquiring attorney may send the proposed letters so long as each letter is clearly labeled advertisement pursuant to Rule 7.3.