

Final

**ETHICS ADVISORY PANEL
OPINION NO. 96-28, REQUEST NO. 689
Issued November 14, 1996**

FACTS:

The inquiring attorney proposes to provide legal services for the employees of a business client. The business client-employer will provide a notice to its employees advising them that the inquiring attorney has agreed to provide legal services to them for specified fees. A fee schedule will be attached to the notice. The notice would also advise that use of the inquiring attorney's services is voluntary and that referral forms may be obtained in the employer's office. The purpose of the referral form, entitled "Legal Service Plan Employment Verification," is to assure the inquiring attorney that the prospective client is in fact an employee of the business. The inquiring attorney has submitted to the Panel a proposed notice and a proposed employee verification form.

ISSUES PRESENTED:

The issue presented by this inquiry is whether an employer's notice advising employees that the inquiring attorney has offered to provide them legal services, and whether an employee verification form, must comply with Rule 7.3 of the Rhode Island Supreme Court Rules of Professional Conduct.

OPINION:

The notice, but not the employee verification form, must comply with the requirements and restrictions set forth in Rule 7.3.

REASONING:

At the outset, the Panel reiterates that it will not embark on the task of editing documents, and will not therefore give approval to a document as a whole by way of an advisory opinion. See R. I. Sup. Ct. Ethics Advisory Panel, Op. 90-15 (1990).

The Rules of Professional Conduct do not prohibit an existing client, such as the business client-employer in the instant situation, from recommending the professional services of a lawyer to employees, provided the client is neither paid a fee nor given anything of value in exchange for such a referral. See Rule 7.2(c). However, written communications which describe the attorney's services and fees and which the employer makes available to the employees, i.e. the prospective clients, must comply with Rule 7.3(b). The inquiring attorney, in effect, is soliciting business from prospective clients through the employer, and the notice is tantamount to a targeted direct mailing which is permitted under Rule 7.3 subject to restrictions.

Rule 7.3 states in pertinent part:

Rule 7.3. Direct Contact with Prospective Clients. -

(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 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 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.

Therefore, the notice proposed by the inquiring attorney, and the fee schedule which will be attached to it, must both be plainly marked "advertisement" in accordance with the requirements of Rule 7.3(b)(1)(a). The inquiring attorney must also submit a copy of the notice and fee schedule to the Supreme Court Disciplinary Counsel and otherwise comply with Rule 7.3(b)(1)(b).

In addition, if the notice or fee schedule indicates that the inquiring attorney's practice is limited to or concentrated in particular fields of law, the notice and fee schedule must contain a disclaimer in accordance with Rule 7.4. See Rule 7.4 (lawyer must indicate Rhode Island does not have procedure for certification of specialization if lawyer indicates practice is limited to or concentrated in particular fields of law.).

The employee verification form is not a written communication to a prospective client for purposes of Rule 7.3, and therefore the requirements and restrictions of Rule 7.3(b) do not apply to it. The form will be used merely to assure the inquiring attorney that the prospective client is an employee of the business client and qualifies for the services at the advertised fees.

The Panel cautions, however, that the use of the phrase "Legal Service Plan" is misleading in this context and as such, is violative of Rule 7.1 which governs all communications about a lawyer's services. See Rule 7.1 (lawyer shall not make false or misleading communications about the lawyer or lawyer's services.) In general, legal service plans are prepaid group plans or are partially funded by employers, are administered by fiduciaries, and allow plan members to choose from a pool of participating attorneys.