

Final

**Rhode Island Supreme Court Ethics Advisory Panel
Opinion No. 2009-04 Request No. No. 962
Issued August 6, 2009**

FACTS:

The inquiring attorney represents a client in a pending lawsuit in which the client has alleged that he/she sustained injuries during surgery as a result of a physician's negligence. An issue in dispute is whether the surgery was necessary or otherwise indicated. The physician's medical records for the client indicate that the client made specific complaints. Such complaints justify the surgery. The client has claimed that he/she filled out a patient-history questionnaire at the initial office visit, and has denied that he/she included in the questionnaire the symptoms and complaints that appear in the physician's medical record. The physician has denied that the client filled out a patient-history questionnaire. The client has further denied having the symptoms that the medical records indicate he/she had. There is expert opinion to suggest that without the symptoms, the surgery was not indicated.

The inquiring attorney wants to investigate the use of patient-history questionnaires in the physician's practice, but due to the confidential nature of medical records, the inquiring attorney is unable to obtain information about the use of patient-history questionnaires for other patients. The inquiring attorney proposes to place an advertisement in the newspaper asking other patients of the physician to contact the inquiring attorney concerning the use of patient-history questionnaires. A proposed advertisement was not submitted to the Panel.

ISSUE PRESENTED:

The inquiring attorney asks whether he/she may place an advertisement in the newspaper asking patients of the physician to contact the inquiring attorney about their experiences relating to the use of patient-history questionnaires.

OPINION:

The inquiring attorney may place an advertisement in the newspaper asking patients of the physician to contact the inquiring attorney about their experiences relating to the use of patient-history questionnaires. The filing and disclosure requirements of Rules 7.2 and 7.3 of the Rules of Professional Conduct do not apply to the proposed advertisement.

REASONING:

The various restrictions on solicitation imposed by the Rules of Professional Conduct relate to a lawyer's solicitation of professional employment. See Rule 7.3 (direct contact and written contact with prospective clients). Similarly, Rule 7.1 (communications about a lawyer services) and Rule 7.2 (advertising) address communications about and advertising of a lawyer's professional services. In the instant inquiry, the inquiring attorney's proposal does not appear to be either a solicitation for professional employment or an advertisement of his/her professional services. Rather, the inquiring attorney proposes to place a newspaper advertisement for the purpose of obtaining factual information that he/she deems necessary for the prosecution of his/her client's case.

Based on the facts as presented, the Panel concludes that the inquiring attorney may place an advertisement in the newspaper asking other patients of the physician to contact him/her regarding their experiences relating to the use of patient-history questionnaires. The Panel also concludes that the filing and disclosure requirements of Rules 7.2 and 7.3 of the Rules of Professional Conduct do not apply to the proposed advertisement. The Panel further advises the inquiring attorney that if individuals respond to the advertisement, the inquiring attorney must abide by Rule 4.3 (dealing with unrepresented persons).