

**Rhode Island Supreme Court
Ethics Advisory Panel Op. 2013-02
Issued March 13, 2013**

FACTS:

The inquiring attorney represents a client who is attempting to withdraw from his/her membership plan at a Golf Club. The client is on a membership-redemption waiting list, seeking the return of his/her initiation payment pursuant to the Golf Club's membership plan. In a pending lawsuit against the Golf Club, the inquiring attorney's client has alleged that the membership agreement is unfair and unconscionable. The inquiring attorney has obtained through discovery a list of other Club members who are also on the redemption list.

The inquiring attorney wants to send a letter to each of the members on the list in an effort to obtain further information about the Golf Club's redemption process, but states that he/she is concerned about running afoul of Rule 7.3 of the Rules of Professional Conduct entitled "Direct contact with prospective clients." The inquiring attorney submitted a proposed letter to the Panel.

ISSUE PRESENTED:

Is it a violation of Rule 7.3 if the inquiring attorney sends the proposed letter to members of a Golf Club, asking them to contact the inquiring attorney about the membership-redemption process?

OPINION:

The inquiring attorney may send a letter to Golf Club members seeking information about his/her client's case without complying with Rule 7.3, but not the proposed letter. The letter submitted by the inquiring attorney appears to be a solicitation, and therefore the inquiring attorney must comply with the requirements of Rule 7.3(c) and (d) if he/she sends it.

REASONING:

Rule 7.3 entitled "Direct contact with prospective clients" applies to this inquiry. In pertinent part, the Rule states as follows:

(c) Every written, recorded or electronic communication from a lawyer soliciting professional employment from a prospective client known to be in need of legal services in a particular matter shall include the words “Advertising Material” on the outside envelope, if any, and at the beginning and ending of any recorded or electronic communication, unless the recipient of the communication is a person specified in paragraphs (a)(1), (a)(2), or (a)(3).

(d) A copy of each such communication shall be sent to the Supreme Court Disciplinary Counsel and another copy shall be retained by the lawyer for three (3) years. If 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 personal [sic] to whom the communication was sent to the Supreme Court Disciplinary Counsel as well as retaining the same information.

The Panel has reviewed the proposed letter submitted by the inquiring attorney in the instant inquiry. The letter states that the inquiring attorney represents X, a member of the Golf Club who is on the membership-redemption waiting list; states that he/she filed a lawsuit against the Club; states that the inquiring attorney is looking to obtain information about the redemption process and about representations made to the member upon joining the Club; and asks the member to contact the inquiring attorney. The inquiring attorney’s letter should, but does not, stop there. In additional paragraphs, the inquiring attorney describes the Club’s redemption process, states the inquiring attorney’s position that the redemption process is unfair and unconscionable, and discloses that at a recent deposition it was learned that only a small number of members received a return of the initiation fee over the last ten years. In a separate lengthy paragraph, the inquiring attorney describes with particularity how recent changes to the Golf Club’s bylaws deliberately impede the return of initiation payments; states that arbitrary new-member classifications make it highly unlikely that a resigning member will live to see the return of his or her initiation payment; and likens the Golf Club to “Hotel California, where you can get in anytime you want but you can never leave.”

In the Panel’s view, the proposed letter goes too far, and it appears to be more a solicitation for professional employment than a request for information from persons having knowledge of matters related to the inquiring attorney’s client’s case. As such, the proposed letter must comply with the requirements of Rule 7.3.

The Panel believes, however, that the Rules permit lawyers to contact persons who have knowledge related to their clients' lawsuits by letter or advertisement without complying with Rule 7.3. See Rhode Island Supreme Court Ethics Advisory Panel Opinion No. 2009-04 (2004) (plaintiff's attorney may place advertisement in newspaper asking patients of defendant to contact attorney with information on patient-history questionnaires without complying with Rules 7.2 and 7.3.) Such a letter for this inquiry would simply state that the inquiring attorney represents a Club member who is suing the Golf Club; that the inquiring attorney is seeking information about the membership-redemption process; and that the inquiring attorney is requesting Club members to contact the inquiring attorney for this purpose. The restrictions of Rule 7.3(c) and (d) would not apply to such a letter.

The Panel concludes that the inquiring attorney may send a letter to Club members seeking information about his/her client's case, without complying with Rule 7.3, but not the proposed letter. The letter submitted by the inquiring attorney appears to be a solicitation for professional services, and therefore the inquiring attorney must comply with the requirements of Rule 7.3(c) and (d) if he/she sends it. The Panel advises the inquiring attorney that if Club members respond to his/her request for information, the inquiring attorney must abide by Rule 4.3 (dealing with unrepresented person).