

Final

ETHICS ADVISORY PANEL
OPINION 96-03, - REQUEST # 645
ISSUED - FEBRUARY 8, 1996

Facts:

The inquiring attorney wants to send a direct mailing to all businesses affected by a recent regulatory change to advise them of the new requirements and to offer legal assistance with respect thereto. The mailing list will be compiled from the public records of the state commission having jurisdiction. The mailing will be marked "advertisement" in full compliance with Rule 7.3(b)(i) and would not be sent to any person or entity which the inquiring attorney knows is represented by counsel with respect to such regulatory matters.

Issues Presented:

- 1) Will the above described mailing violate Rule 7.3; and
- 2) If the mailing were sent to a person who is represented by an attorney on matters unrelated to the new regulations, would the mailing violate Rule 7.3.

Opinion:

- 1) No, provided the Rules regarding advertisement are strictly observed; and
- 2) No.

Reasoning:

Rule 7.3 entitled "**Direct Contact with Prospective Clients**" sets forth the criteria regarding solicitation. That Rule states the following in 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 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.

Any direct solicitation to prospective clients, with whom the lawyer has no family or prior professional relationship must be plainly marked according to (b)(1) (a) and a copy must be sent to Disciplinary Counsel pursuant to (b) (1)(b) of Rule 7.3.

Rule 7.3 (b) (2) entitled "**Direct Contact with Prospective Clients**" states:

(b) Written communication.....

(2) A lawyer shall not send, or knowingly permit to be sent, on behalf of the lawyer, the lawyer's firm, the lawyer's partner, an associate, or any other lawyer affiliated with the lawyer or the lawyer's firm a written communication to any prospective client for the purpose of obtaining professional employment if :

- (a) The written communication concerns a specific matter and the lawyer knows or reasonably should know that the person to whom the communication is directed is represented by a lawyer in the matter;

Pursuant to the Rule, the inquiring attorney may not send a written communication to a prospective client with respect to the new requirements if the inquiring attorney knows that the client is represented by counsel regarding such regulatory matters. However, the fact that the inquiring attorney knows the prospective client to be represented by counsel on other unrelated matters does not prohibit the communication under Rule 7.3 (b). The Panel finds this rule to be clear on its face. The prohibition against communication with a prospective client applies to someone represented by counsel in the matter in question.