

Final

**ETHICS ADVISORY PANEL**  
**OPINION NO. 96-31, REQUEST NO. 693**  
**Issued November 14, 1996**

**FACTS:**

The inquiring attorney is offering to provide legal services to members of a trade organization, their employees, and family members at discounted fees. The president of the trade organization plans to send a letter to all members of the organization informing them that, in addition to other programs currently offered through the organization, the legal services of the inquiring attorney will be available to them. The letter also advises members that they will be receiving additional information directly from the inquiring attorney. The inquiring attorney has submitted to the Panel two proposed letters of the president.

The inquiring attorney acknowledges that his/her own letter to members of the organization must comply with Rules 7.1 and 7.3 of the Rhode Island Supreme Court Rules of Professional Conduct.

**ISSUE PRESENTED:**

The inquiring attorney asks whether the president's letter to the organization's members which announces the availability of a legal services program designed for them by the inquiring attorney must comply with Rule 7.3(b). He/she also asks whether the president's letter must comply with the rule if, in addition to announcing the legal services program, it also describes the inquiring attorney's services, fees, or experience.

**OPINION:**

A trade organization president's letter to organization members which announces the availability of the inquiring attorney's legal services to them is a direct written solicitation on behalf of the inquiring attorney, whether or not it describes the inquiring attorney's services, fees, or experience. Therefore, the president's letter must comply with the requirements of Rule 7.3(b).

**REASONING:**

Preliminarily, the Panel will not embark on the task of editing documents and will not give approval to documents as a whole, such as the proposed letters submitted by the inquiring attorney, by way of an advisory opinion.

Direct written communications from an attorney soliciting professional employment from a prospective client with whom the attorney has no family or prior professional relationship are not prohibited by Rule 7.3, but are subject to reasonable restrictions.

Rule 7.3 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 communications 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 client, 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.

The restrictions are designed to minimize or preclude overreaching or abuse by attorneys, and to ensure attorney accountability in the event that they should occur. See Comment to Rule 7.3. Rule 7.3 applies to solicitations made on behalf of an attorney through agents or third parties. See Rule 8.4 (prohibiting attorneys from violating or attempting to violate the Rules of Professional Conduct through the acts of another.) Thus, an attorney may not circumvent Rule 7.3 through the use of agents or third parties.

The Panel takes the position that the president's letter in the instant request is a solicitation on behalf of the inquiring attorney. The letter not only announces the availability of a legal services program, but also names the inquiring attorney. Unlike prepaid or group legal service plans, the inquiring attorney's legal services program is neither operated nor administered by the trade organization. It does not consist of a pool of participating attorneys. It is totally owned, operated, and controlled by the inquiring attorney. In essence, the president's letter is a "pitch" for the inquiring attorney made to prospective clients. Because the inquiring attorney would be required to comply with Rule 7.3(b) respecting direct written communications soliciting employment from prospective clients, the president's letter which is a solicitation on behalf of the inquiring attorney must also comply with Rule 7.3(b). The inquiring attorney must advise the president of the trade organization that the solicitation letter and its envelope must bear the words "advertisement" in accordance with the rule, and the attorney must otherwise comply with the rule.