

The Supreme Court of Ohio

BOARD OF COMMISSIONERS ON GRIEVANCES AND DISCIPLINE

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OFFICE OF SECRETARY

OPINION 2007-5

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SYLLABUS: A lawyer's or law firm's advertising of legal services to a prospective business client through a personalized letter addressed to a contact person at the business is a direct mail solicitation subject to the requirements of Rule 7.3(c). A lawyer or law firm should disclose in the letter how the identity of the prospective client was obtained. A lawyer or law firm should include the recital "Advertising Material" or "Advertisement Only" in the text of the letter and on the envelope. And, a lawyer or law firm must refrain from addressing a predetermined evaluation of the merits of any legal matter that the business might pursue.

OPINION: This opinion addresses a question regarding a lawyer or law firm advertising its legal services by sending a personalized letter to a prospective business client. For purposes of this opinion, a personalized letter is one in which the salutation of the letter is addressed to a specific person or a specific business.

Is a lawyer's or law firm's advertising of legal services through a personalized letter addressed to a contact person of a prospective business client a direct mail solicitation subject to the requirements of Rule 7.3(c), or a general announcement not subject to the requirements of Rule 7.3(c)?

A law firm wants to send personalized letters to prospective business clients to advertise the law firm's services and areas of practice and to announce the addition of a new attorney and a new practice area. A law firm brochure would be enclosed with each letter. The law firm provides legal services in areas of the law of interest to these businesses.

The law firm obtained the names and addresses of prospective business clients and their contact persons from the membership lists of trade organizations in the city and metropolitan area in which the law firm is located. The salutation in each letter would be addressed to the contact person for the business.

Advertising of legal services is governed by Rules 7.1, 7.2, 7.3, 7.4, and 7.5 of the Ohio Rules of Professional Conduct. Lawyers should review these rules in their entirety, but Rules 7.1, 7.2(a), and 7.3 are most pertinent to this inquiry.

In advertising legal services, false, misleading, or nonverifiable communication about the lawyer or the lawyer's services is prohibited by Rule 7.1.

RULE 7.1: COMMUNICATIONS CONCERNING A LAWYER'S SERVICES

A lawyer shall not make or use a false, misleading, or nonverifiable communication about the lawyer or the lawyer's services. A communication is false or misleading if it contains a material misrepresentation of fact or law or omits a fact necessary to make the statement considered as a whole not materially misleading.

Advertisement of legal services by written communication, as well as other types of communication, is broadly permitted by Rule 7.2(a).

Rule 7.2 ADVERTISING AND RECOMMENDATION OF PROFESSIONAL EMPLOYMENT

(a) Subject to the requirements of Rules 7.1 and 7.3, a lawyer may advertise services through *written*, recorded, or electronic communication, including public media.

Comment [2] to Rule 7.2 explains that the rule "permits public dissemination of information concerning a lawyer's name or firm name, address, and telephone number; the kinds of services the lawyer will undertake; the basis on which the lawyer's fees are determined, including prices for specific services and payment and credit arrangements; a lawyer's foreign language ability; names of references and, with their consent, names of clients regularly represented; and other information that might invite the attention of those seeking legal assistance."

Direct contact with prospective clients is governed by Rule 7.3. All of the provisions of this rule are important, but subsection (c) is of particular pertinence to this opinion.

RULE 7.3: DIRECT CONTACT WITH PROSPECTIVE CLIENTS

(a) A lawyer shall not by in-person, live telephone, or real-time electronic contact solicit professional employment from a prospective client when a significant motive for the lawyer's doing

so is the lawyer's pecuniary gain, unless either of the following applies:

(1) the person contacted is a lawyer;

(2) the person contacted has a family, close personal, or prior professional relationship with the lawyer.

(b) A lawyer shall not solicit professional employment from a prospective client by *written*, recorded, or electronic communication or by in-person, telephone, or real-time electronic contact even when not otherwise prohibited by division (a), if either of the following applies:

(1) the prospective client has made *known* to the lawyer a desire not to be solicited by the lawyer;

(2) the solicitation involves coercion, duress, or harassment.

(c) Unless the recipient of the communication is a person specified in division (a)(1) or (2) of this rule, every *written*, recorded, or electronic communication from a lawyer soliciting professional employment from a prospective client whom the lawyer *reasonably believes* to be in need of legal services in a particular matter shall comply with all of the following:

(1) Disclose accurately and fully the manner in which the lawyer or *law firm* became aware of the identity and specific legal need of the addressee;

(2) Disclaim or refrain from expressing any predetermined evaluation of the merits of the addressee's case;

(3) Conspicuously include in its text and on the outside envelope, if any, and at the beginning and ending of any recorded or electronic communication the recital - "ADVERTISING MATERIAL" or "ADVERTISEMENT ONLY."

(d) Prior to making a communication soliciting professional employment from a prospective client pursuant to division (c) of this rule to a party who has been named as a defendant in a civil action, a lawyer or *law firm* shall verify that the party has been served with notice of the action filed against that party. Service shall be verified by consulting the docket of the court

in which the action was filed to determine whether mail, personal, or residence service has been perfected or whether service by publication has been completed. Division (d) of this rule shall not apply to the solicitation of a debtor regarding representation of the debtor in a potential or actual bankruptcy action.

(e) If a communication soliciting professional employment from a prospective client or a relative of a prospective client is sent within thirty days of an accident or disaster that gives rise to a potential claim for personal injury or wrongful death, the following “Understanding Your Rights” shall be included with the communication. [Omitted].

At issue in this opinion is whether a lawyer’s advertising of legal services through a personalized letter to a prospective business client is a direct mail solicitation subject to the requirements of Rule 7.3(c), or a general announcement not subject to the requirements of Rule 7.3(c).

General announcements are treated differently from direct mail solicitation of prospective clients. Comment [7] to Rule 7.3 explains that “[g]eneral announcements by lawyers, including changes in personnel or office location, do not constitute communications soliciting professional employment from a client known to be in need of legal services within the meaning of this rule.”

Direct mail solicitations letters are subject to the requirements of Rule 7.3(c)(1) through (3) when a lawyer sends a letter “soliciting professional employment from a prospective client whom the lawyer *reasonably believes* to be in need of legal services in a particular matter.” First, there must be accurate and full disclosure in the written communication of how the identity of the prospective client was obtained and the specific legal need identified. Second, there must be a disclaimer or a refraining from addressing a predetermined evaluation of the merits of the addressee’s case. Third, there must be an inclusion of the recital “Advertising Material” or “Advertisement Only” in the text of the letter and on the outside envelope.

“‘Reasonable belief’ or ‘reasonably believes’ when used in reference to a lawyer denotes that the lawyer believes the matter in question and that the circumstances are such that the belief is reasonable.” Rule 1.0(j): Terminology.

As to the facts presented, there is no indication that the lawyer or law firm would have a reasonable belief that the businesses listed on the membership list of a trade organization would be in need of legal services in a “particular matter.” But, it is likely that the lawyer or law firm would have a reasonable belief that a business listed on a trade organization membership would have a “general need” for the legal services that the lawyer or law firm provides.

The Board's view is that the personalization of an advertising letter to a prospective client, even in the absence of a reasonable belief of legal needs in a "particular matter," is enough to trigger the direct mail solicitation requirements of Rule 7.3(c).

A personalized letter is not a general announcement. Personalization implies a familiarity with the recipient and the recipient's matters, whether general legal needs or specific legal needs. For this reason the safeguards of Rule 7.3(c)(1) through (3) are applicable. The lawyer or law firm should fully and accurately disclose in the letter how the identity of the prospective client was obtained--in this instance, from the membership lists of trade organizations. The lawyer or law firm should include in the text of the letter and on the outside envelope the recital "Advertising Material" or "Advertisement Only". And, the law firm must refrain from addressing a predetermined evaluation of the merits of any legal matter that the business might pursue.

In closing the Board advises, as follows. A lawyer's or law firm's advertising of legal services to a prospective business client through a personalized letter addressed to a contact person at the business is a direct mail solicitation subject to the requirements of Rule 7.3(c). A lawyer or law firm should disclose in the letter how the identity of the prospective client was obtained. A lawyer or law firm should include the recital "Advertising Material" or "Advertisement Only" in the text of the letter and on the envelope. And, a lawyer or law firm must refrain from addressing a predetermined evaluation of the merits of any legal matter that the business might pursue.

Advisory Opinions of the Board of Commissioners on Grievances and Discipline are informal, nonbinding opinions in response to prospective or hypothetical questions regarding the application of the Supreme Court Rules for the Government of the Bar of Ohio, the Supreme Court Rules for the Government of the Judiciary, the Ohio Rules of Professional Conduct, the Ohio Code of Judicial Conduct, and the Attorney's Oath of Office.