

ETHICS ADVISORY OPINION
09-14

UPON THE REQUEST OF A MEMBER OF THE SOUTH CAROLINA BAR, THE ETHICS ADVISORY COMMITTEE HAS RENDERED THIS OPINION ON THE ETHICAL PROPRIETY OF THE INQUIRER'S CONTEMPLATED CONDUCT. THIS COMMITTEE HAS NO DISCIPLINARY AUTHORITY. LAWYER DISCIPLINE IS ADMINISTERED SOLELY BY THE SOUTH CAROLINA SUPREME COURT THROUGH ITS COMMISSION ON LAWYER CONDUCT.

Facts:

Lawyer lives in a retirement community and would like to send letters to new residents and others in the community, indicating that the lawyer is available to assist them by providing certain estate planning services.

Question Presented:

Is a lawyer required to comply with the requirements set forth in Rule 7.3 (d) (g), or (h) when mailing letters to residents of a specific geographic area where the lawyer believes those people may be in need of certain legal services generally?

Summary:

Letters advertising the Lawyer's general availability to provide certain legal services which are sent to persons in a restricted geographic region, such as a retirement community or selected zip code, do not constitute solicitations to persons known to be in need of legal services under Rule 7.3(d). Nor do such letters do not appear to be prompted by a specific occurrence under Rule 7.3(g). However, the letters do seek employment from specific prospective clients under Rule 7.3(h)

Opinion:

Rule 7.2(a) of the Rules of Professional Conduct permits written or recorded communications with prospective clients, subject to the limitations set forth in Rules 7.1 and 7.2. When the prospective client is a person whom the lawyer knows needs legal services, certain other regulations are implicated. The Lawyer in the retirement community questions whether solicitation to his neighbors is governed by three specific provisions of Rule 7.3: subsections (d), (g), and (h).

Rule 7.3(d) of the South Carolina Rules of Professional Conduct states:

(d) 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, and with whom the lawyer has no family, close personal or prior professional relationship, shall conform to Rules 7.1 and 7.2 and, in addition, must conform to the following provisions:

Subparagraphs (1), (2) and (3) to Rule 7.3(d) set forth numerous disclaimers and statements which are required in the communications of the type referenced in Rule 7.3(d). The Lawyer in the retirement community, however, does not propose to send the letters to persons "known to be in need of legal services in a particular matter." While Lawyer lives in a retirement community whose residents are presumably elderly, there is no reason to assume that those people are in greater need of estate planning services than inhabitants of other geographic regions.

Comment 7 to Rule 7.3(d) explains that the requirements in Rule 7.3(d) that certain communications be marked "Advertising Material" and include other statements do not apply to communications sent in

response to requests by potential clients or their agents. More importantly, a general announcement by a lawyer of his availability to perform certain services does not count as soliciting professional employment from a client known to be in need of legal services within the meaning of the Rule, and therefore is also exempt.

General mailings setting forth the Lawyer's availability and areas of practice and which are targeted to certain neighborhoods do not constitute mailings to prospective clients known to be in need of specific legal services, except in circumstances where the lawyer does in fact know that the recipient is in need of legal services. The mailings also do not appear to be prompted by any specific occurrence or related to a specific matter. Subsection (g) applies only to solicitations "prompted by a specific occurrence involving or affecting the intended recipient... or a family member." Subsection (h) applies only to solicitations regarding "a specific matter."

The Committee takes this opportunity to point out several nuances to the solicitation rule. First, the language "known to be in need of legal services" is a limitation only on subsection (d), and not any other subsection. The remainder of Rule 7.3 applies whether or not the recipient is known to be in need. The prohibitions (a) and the filing requirement in (c) are subject only to exceptions where the recipient is a lawyer or has a family, close personal, or prior professional relationship with the soliciting lawyer. Other subsections of the rule have other limitations, such as "specific occurrence" in (g) and "specific matter" in (h). The prohibitions in subsections (b), (e), and (f) apply to all solicitations without exception. In determining the obligations imposed by the solicitation rule, lawyers are cautioned to read each subsection in detail, along with the comments thereto.

Although subsections (d), (g) and (h), do not apply to the facts of this inquiry, many other parts of Rule 7.3 do. The proposed letter is also an advertisement and must comply with the restrictions and requirements of Rules 7.2 and 7.4. It is also a communication governed by Rule 7.1.
(See also, S.C. Bar Ethics Op. # 97-05)