
E-84-13 Direct mail advertising

Question

May a law firm send a letter describing the firm's "specialties," specific areas of practice and general information about the firm to union members in a specific geographic area?

Opinion

The Wisconsin Code of Professional Responsibility, codified in Chapter 20 of the Wisconsin Supreme Court Rules, states that a "lawyer may advertise the lawyer's availability to provide legal services except use of any advertisement which is false, misleading, deceptive or unfair is professional misconduct." SCR 20.08(7)(a); see *In the Matter of Disciplinary Proceedings Against Marcus & Tepper*, 107 Wis. 2d 560 (1982); *In the Matter of R.M.J.*, 455 U.S. 191 (1982) (truthful advertising related to lawful activities is entitled to the protections of the First Amendment). A comment accompanying SCR 20.08(7) states that the rule permits the dissemination of objective, relevant information on which a person may base an informed selection of competent counsel.

The ethical consideration with questions of this type is to draw the line between permissible advertising and impermissible solicitation. In *Ohralik v. Ohio State Bar Assn.*, 436 U.S. 447 (1978), the U.S. Supreme Court prohibited solicitation that involved both the "invitation to deal" and an in-person delivery of that invitation. In *Ohralik*, the court emphasized the substantial danger of undue pressure inherent in in-person solicitations. In such circumstances, an individual may often feel compelled to make an immediate decision without adequate opportunity for reflection. General direct mailings, however, do not appear to present those dangers. ABA/BNA *Lawyers' Manual on Professional Conduct*, at 81:602 (hereinafter *Lawyer's Manual*); see *In re Primus*, 436 U.S. 417 (1978).

Accordingly, so long as a mailing falls within the requirements set forth in SCR 20.08(7) and does not constitute impermissible solicitation as discussed below, direct mail advertising to potential clients is permissible. Cf. Formal Opinion E-83-2, Wis. Bar Bull., June 1984, at 80 (direct mail advertising to

prospective commercial clients); Formal Opinion E-82-1, Wis. Bar Bull., June 1984, at 72 (direct mail advertising to clients and acquaintances).

In order to avoid solicitation concerns, a lawyer engaged in direct mail advertising should consider, among other things, the following.

1. Advertising legal services by mail is permitted only when it is generalized and not tailored to specific needs of individual recipients. Michigan State Bar Opinion CI-573, *Lawyer's Manual*, at 801:4812. Accordingly, a lawyer may not target any mail advertising to potential clients with an identified need for legal services. *Id.*

2. Mailings to individuals or organizations in particular geographic or demographic areas or to groups of person whose characteristics suggest that they may be in need of legal services are permissible. Maryland State Bar Opinion 81-21. *Lawyer's Manual*, at 801:4307.

3. Lawyers may not initiate follow-up communications after mailings unless the recipient has responded positively. Formal Opinion E-83-16, Wis. Bar Bull., June 1984, at 85.

In light of the above, a letter detailing a law firm's specific areas of practice and general information about the firm may be mailed to union members in a specific area so long as the letter is not false, misleading, deceptive or unfair. However, in such a mailing, the firm may not indicate its "specialties" unless they are in the fields of patent, trademark or admiralty law. SCR 20.11; *see* SCR 20.08(7) (comment).