



ISBA Professional Conduct Advisory Opinion

Opinion No. 12-04
January 2012

Subject: Advertising and Solicitation

Digest: Labeling communications to solicit professional employment as "promotional" materials does not comply with requirements of the Illinois Rules of Professional Conduct to label such materials as "Advertising Material."

References: Illinois Rules of Professional Conduct 7.2 and 7.3(c);

In the Matter of Benkie, 892 N.E.2d 1237 (Ind. 2008);

ABA Formal Opinion 10-457.

FACTS

Several firms have placed the legend "promotional materials" on firm brochures and other marketing papers that they distribute to other lawyers and non-lawyers.

QUESTION

The inquirer asks whether the legend "promotional materials" complies with the requirements of Rule 7.3(c).

OPINION

Rule 7.3(c) provides , in relevant part, that:

"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 shall include the words "Advertising Material" on the outside envelope, if any, and at the beginning and ending of any recorded or electronic communication, ..."

We are of the view that the labeling of the communications to solicit professional employment in question as "promotional materials" does not comply with the requirements of this Rule. While the terms "advertising" and "promotional" may be similar, we believe RPC 7.3's specific use of the term "Advertising Material," highlighted by quotation marks, is a clear indication of the mandatory nature of the use of that specific term. See *In the Matter of Benkie*, 892 N.E.2d 1237 (Ind. 2008)(use of the term "Legal Advertisement" did not satisfy "Advertising Material" requirement). Accordingly, we believe that only the labeling of firm brochures and the like as "Advertising Material" when used as a means of solicitation complies with the requisites of Rule 7.3.

While firm brochures (and their modern counterpart, the internet website) are clearly regulated communications under the RPC, and thus subject to prohibitions on false or misleading statements, it should be noted that the labeling requirements of Rule 7.3(c), only apply to communications employed in the direct written, recorded or electronic solicitation of prospective clients known to be in need of legal services. Communications sent in response to requests from potential clients and general announcements do not require the special labeling. RPC 7.3, Comment [7]. Further, nothing in this opinion is intended to imply that firm brochures (or websites) generally are required to be labeled as "Advertising Material." (For a discussion of issues relating to firm websites, see ABA Formal Opinion 10-457.) In addition, the non-solicitation provisions of Rule 7.3 in its entirety are directed only to contacts with certain lay persons, not to contacts with other attorneys or persons with whom the lawyer has a family, close personal, or prior professional relationship. Thus, to the extent that the marketing materials referenced in this inquiry are directed to lawyers, (or other exempted individuals), no requirement exists that they be labeled in any fashion under Rule 7.3(c).

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