
E-94-3 Law firm open house

Question

May lawyers establishing a new office in an office-sharing arrangement hold an open house to which business owners in the neighboring community receive written invitations?

Opinion

In Formal Opinion E-81-1, which interpreted provisions of the Code of Professional Responsibility as it then applied to Wisconsin lawyers, the opinion was generally expressed that a law firm could not invite to an open house persons who had no prior professional relationship nor personal friendship with lawyers in the firm.

Much has changed since that opinion was issued. The Rules of Professional Conduct have replaced the Code of Professional Responsibility as the principal source of professional guidance and disciplinary enforcement. In addition, the constitutional protections afforded commercial speech have been elaborated in numerous ways touching on the appropriate limits that may be placed on lawyers' efforts to attract a clientele. Due to these substantial changes in the law governing lawyers as it relates to lawyers' efforts to attract a clientele, Formal Opinion E-81-1 is hereby withdrawn.

In some circumstances and subject to constitutional limitations, a lawyer may be prohibited by SCR 20:7.3(c) from initiating personal contact with a prospective client for the purpose of obtaining professional employment. While lawyers may sponsor an open house at their law offices simply to be neighborly, the hope of attracting clients will usually form at least part of the motivation. Thus, the Professional Ethics Committee assumes, for purposes of this opinion, that an open house at law offices is motivated, at least in part, by a desire to obtain professional employment from those in attendance.

The question remains whether a written invitation to attend a law office open house constitutes initiating personal contact with a prospective client for the purpose of obtaining professional employment, in violation of SCR 20:7.3(c). The Rules of Professional Conduct must be interpreted in light of constitutional

principles to ensure that their requirements and prohibitions are permissible. In a sense, all advertising by lawyers is an effort to initiate personal contact with prospective clients for the purpose of obtaining professional employment. Certainly, the letters mailed by the lawyer in *Shapero v. Kentucky Bar Association*, 486 U.S. 466 (1988), to defendants in real estate foreclosure actions soliciting their business were intended to initiate personal contact, which would come to fruition if and when the recipients of those letters made contact with Shapero. The U.S. Supreme Court held that those communications were constitutionally protected, particularly because the invitation to make personal contact was in writing. As a writing, it could be ignored, discarded or responded to at the recipients' discretion. Thus, the communication did not present the same risks of overreaching that an in-person contact or phone call might entail.

The same is true of a written invitation to attend a law office open house. The recipient could ignore, discard or respond to such an invitation at his or her discretion. Under the terms of SCR 20:7.3(c), any personal contact that ensued from the written invitation would be at the recipient's election. In that sense, the recipient would initiate any in-person contact that results, by voluntarily choosing to attend the open house.

Therefore, the answer to the question is yes. Attorneys may sponsor a law office open house to which members of the public are invited. Of course, this in no way diminishes the attorney's responsibility under SCR 20:7.1 to make only accurate and nonmisleading statements about the attorney's services.