
E-83-2 Direct mail advertising

Question

May attorneys mail a letter and flyer describing the firm's services and fees to prospective commercial clients?

Answer

Yes.

Opinion

In Formal Opinion E-80-10 (September 1980) the Professional Ethics Committee addressed the issue of targeted direct mail advertising. The question presented in that opinion was whether an attorney could inform, by letter, real estate brokers and financial institutions in a three-county area of the attorney's availability to act as attorney and escrow agent in F.H.A. loan closings. The committee found that the proposed letter constituted solicitation in violation of Wis. Stat. § 757.295 (1979-80) and was therefore prohibited.

The rule on attorney advertising in Wisconsin is set forth in Supreme Court Rule 20.08(7). That rule provides, in subsection (a), 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." A comment accompanying the rule provides that the rule permits the dissemination of objective, relevant information on which a person may base an informed selection of competent counsel.

Since the issuance of Formal Opinion E-80-10, the committee has addressed the issue of direct mail advertising in light of recent decisions by both the U.S. Supreme Court and the Wisconsin Supreme Court. *See In Re R.M.J.*, 455 U.S. 191 (1982); *In Re Disciplinary Hearings Against Marcus & Tepper*, 107 Wis. 2d 560 (1982).

In Formal Opinion E-82-1 (June 1982), the committee held that it would be proper for a law firm to publish and distribute a newsletter to clients and acquaintances which would provide general information on various topics of law.

The question presented in Formal Opinion E-82-1, however, was a narrow one, i.e., whether it was permissible to mail a newsletter to *existing* clients and acquaintances. The committee now is asked to broaden the scope of permissible direct mail advertising to include prospective commercial clients. For several reasons the committee finds that the proposed mailing would be proper.

First, you propose to mail the letter and flyer to commercial clients. Presumably this audience has more experience and is thus a more sophisticated audience in dealing with lawyers than are members of the general public. The concerns with solicitation expressed in E-80-10 are, therefore, less forceful in the context you propose.

Second, the U.S. Supreme Court held in *R.M.J.* that a complete prohibition against mailing announcement cards to persons other than an attorney's clients and acquaintances was unreasonable in the absence of a substantial state interest or when a less restrictive method of regulation is available. The committee believes that SCR 20.08(7)(a) provides such a less restrictive regulatory standard. We believe this view is in accord with the Wisconsin Supreme Court's latest decision on attorney advertising. See *Marcus & Tepper*, 107 Wis. 2d 560 (1982).

In light of the above, your proposed letter and flyer would not be improper provided it met the criteria set forth in SCR 20.08(7)(a), i.e., the advertisements were not false, misleading, deceptive, or unfair. Accordingly, Formal Opinion E-80-10 is withdrawn to the extent it conflicts with this opinion.

Please note, however, that the views expressed by the committee in this opinion are limited *solely* to the situation of direct mail advertising for *commercial* clients.