

## Utah Ethics Opinions

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UTAH STATE BAR

Ethics Advisory Opinion Committee

Opinion No. 02-02

Issued February 11, 2002

¶1 **Issue:** To what extent does the recent amendment to Utah Rules of Professional Conduct 7.3(c) affect a lawyer's or law firm's newsletters and "alerts" to clients and prospective clients, brochures provided at public seminars, promotional items provided at seminars and other events, and web-site information?

¶2 **Facts:** A law firm prepares and mails, or e-mails, newsletters to clients and, in certain instances, to prospective clients with whom attorneys at the firm have no prior or current business, familial or close personal relationship. The newsletter and other firm information is also posted on the firm's web-site. The law firm also sends notices or "alerts" on certain areas of the law to clients and prospective clients who may be interested in those areas. The law firm also on occasion, especially with sponsorship of activities such as seminars, sets up a booth or other location where various materials, such as general brochures about the law firms are made available to attendees of the function. Finally, the firm, either at seminars or other events, provides promotional items such as golf balls, flashlights, pens, and the like which have the firm's logo on them.

¶3 **Analysis:** Rule 7.3(c) currently states:

Every written communication from a lawyer soliciting professional employment from a prospective client and with whom the lawyer has no family relationship, prior or current professional relationship, or close personal friendship, shall prominently include the words "Advertising Material" on the outside envelope, if any, and at the beginning of the communication. For the purposes of this subsection, "written communication does not include advertisement through public media, including but not limited to a telephone directory, legal directory, newspaper or other periodical, outdoor advertising, radio or television.<sup>2</sup>

¶4 In Opinion 99-04<sup>3</sup> we determined that a "solicitation" in the context of Rule 7.3 means a communication initiated by

the lawyer with respect to the lawyer's availability to provide or to accept professional employment and necessarily includes an offer by the lawyer to provide or to accept professional employment.<sup>4</sup>

¶5 If the newsletter, alert or brochure encourages the recipient to engage the firm's services or contact the firm for further information, extolls the firm's expertise, or otherwise contains an offer to provide legal services, then the item constitutes a "solicitation" of professional employment. As such, unless it is sent to a current or prior client or to someone with whom a lawyer in the firm has a familial relationship or close personal friendship, Rule 7.3(a) requires that it contain the words "Advertising Material" prominently on the outside envelope, if any, and at the beginning of the communication.

¶6 The firm's web-site, however, is not a written communication which is "sent" from the firm to anyone. A person's visit to a web-site to obtain information can be viewed either as "advertisement through public media" or as analogous to telephoning the firm or visiting a lawyer's office to request information; it does not require an "Advertising Material" legend.<sup>5</sup> An e-mail that is directed to a person's individual e-mail address, on the other hand, falls in the same category as a regular mailing and must contain the appropriate "Advertising Material" legend at the beginning of the e-mail message.

¶7 Finally, items such as pens, flashlights, golf balls and the like displaying the firm's logo do not constitute a written communication soliciting professional employment. The firm's logo does not extoll the firm's expertise, encourage the recipient to contact the firm, or otherwise request employment. As a result, such items do not need to contain the words "Advertising Material" on them.<sup>6</sup>

¶8 **Conclusion:** If the newsletters, alerts or brochures are designed by the firm in such a way that they constitute a solicitation of professional employment from a prospective client with whom no attorney at the firm has any family relationship, prior or current professional relationship, or close personal friendship, they must prominently include the words "Advertising Material" on the outside envelope, if any, and at the beginning of the communication. If the newsletters and alerts are not designed in such a way that they constitute a solicitation of professional employment, then they do not need to contain the words "Advertising Material" on them. Rule 7.3(c) does not require the firm's web-site to have the words "Advertising Material" prominently displayed on it. The firm's logo items also do not have to have the words "Advertising Material" displayed on them.

## Footnotes

1. The request for an opinion was submitted by a law firm. Our analysis applies equally to individual lawyers.

2. Utah Rules of Professional Conduct 7.3(a) (2002). The current version of this rule was adopted by the Utah Supreme Court, effective April 1, 2001.

3. Utah Ethics Adv. Op. 99-04, 1999 WL 608212 (Utah St. Bar).

4. The 2001 amendments to Rule 7.3(a) do not affect our previous discussion of the definition of "solicit." *See also* Calif. Rules of Professional Conduct, Rule 1400(B)(1) ("solicitation" is any communication "concerning the availability for professional employment of a member or law firm in which a significant motive is pecuniary gain").

5. Utah Ethics Adv. Op. 97-10, 1997 WL 705482 (Utah St. Bar).

6. Although a case might be made that the "subject" or "re" line of an e-mail is similar to an envelope for a regular mailing, we do not decide here whether the words "Advertising Material" must be included in that line.

## Rule Cited:

7.3