

Utah Ethics Opinions

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Utah State Bar

Ethics Advisory Opinion Committee

Opinion No. 99-04

Approved June 30, 1999

General Issue: What are the ethical considerations that govern a lawyer who wishes to conduct legal seminars; provide legal information to groups of retirement-home residents; host open houses; set up information booths at trade shows; participate in Bar-sponsored question-and-answer programs; or make in-person contacts with prospective clients at the request of their friends or relatives?

Summary: This Opinion analyzes and decides a range of related questions that have arisen in connection with lawyers' marketing and solicitation activities. In general, we find that lawyers may make their services known through a variety of methods that do not involve uninvited, one-on-one approaches, discussions or solicitations. On the other hand, where monetary gain is a significant motivation, lawyers may not generally engage in uninvited, direct in-person communications with prospective clients in order to indicate the lawyer's availability to accept professional employment.

Issue No. 1: May a lawyer sponsor and advertise a free seminar on legal issues to be presented in a group setting to members of the public and (i) offer literature or videos discussing the legal topic, either with or without fee, to attendees of the seminar, (ii) give a business card to attendees who request one, and (iii) accept employment to provide legal services to an attendee who initiates a request for professional services?

Opinion: Yes. Provided that the invitations do not communicate the lawyer's availability to accept professional employment, a lawyer may invite members of the public to a law-related seminar with invitations delivered by mail, by telephone or in person. If the invitations communicate the lawyer's availability to accept professional employment, the invitation may not be in person or telephonic and must comply with Utah Rules of Professional Conduct 7.1, 7.2 and 7.3(b). So long as the lawyer complies with the requirements of Rule 7.3(a) and does not solicit

professional employment from attendees of the seminar in person, the lawyer may provide a business card to an attendee of the seminar who requests it and may accept employment to provide legal services to attendees of the seminar who initiate the request for professional services. The lawyer may distribute or offer in person to each attendee literature or videos discussing the legal topic, with or without fee, provided the literature or videos do not communicate the lawyer's availability to accept professional employment. The lawyer may distribute or offer in person to attendees literature or videos which communicate the lawyer's availability to accept professional employment only if the request for such materials is initiated by the attendee. The lawyer may make business cards, brochures and other literature communicating the lawyer's availability to accept professional employment available at a table to those in attendance who voluntarily, without in-person encouragement, choose to pick up the materials.

Issue No. 2: If a lawyer volunteers to appear before a group of residents of a retirement or senior center to answer in a group setting questions they may have concerning legal topics, may the lawyer ethically accept legal engagements offered by residents of the center who attend the group question and answer session?

Opinion: Yes, as long as the lawyer complies with the requirements of Rule 7.3(a) and does not solicit professional employment in person. The lawyer is subject to the same ethical restraints during a group question and answer session as are set forth in this Opinion with respect to law-related seminars.

Issue No. 3: If a lawyer purchases booth space at a trade show, may the lawyer (i) discuss legal topics one on one with persons who voluntarily visit the lawyer's booth and (ii) accept legal engagements offered by attendees of the trade show who visit the lawyer's booth and engage in one-on-one discussions with the lawyer?

Opinion: Yes, so long as the lawyer complies with the requirements of Rule 7.3(a) and does not engage in in-person solicitation of professional employment. (fn1) The lawyer may display print advertisements at or about the booth that comply with Rules 7.1 and 7.2.

Visits by the public to a lawyer trade-show booth are similar to visits by non-clients to a lawyer's advertised open house. The lawyer may not communicate the lawyer's availability to accept professional employment in person, but he may discuss legal topics with the prospective clients. When the request is initiated by the prospective client, the lawyer may privately provide individualized legal advice. The lawyer may not generally distribute business cards,

brochures or other literature communicating the lawyer's availability to accept professional employment in person, but may provide such materials to those prospective clients who initiate a request for such information. The lawyer may make available materials communicating the lawyer's availability to accept professional employment at a table to those in attendance who voluntarily, without in-person encouragement, choose to pick up the materials. The lawyer may accept professional employment from prospective clients who meet with the lawyer so long as the lawyer does not engage in in-person solicitation in violation of Rule 7.3(a).

Issue No. 4: May a lawyer volunteer to set up a table in a common area of a retirement or senior center in order to meet one on one to discuss legal topics with residents of the center who voluntarily visit the lawyer's table, and may the lawyer accept legal engagements proposed by residents of the center who visit the lawyer's table and voluntarily engage in one-on-one discussions of legal issues with the lawyer?

Opinion: Yes, so long as the lawyer complies with the requirements of Rule 7.3(a) and does not engage in in-person solicitation of professional employment from persons with whom the lawyers has no family or prior professional relationship for pecuniary gain. The lawyer is subject to the same ethical restraints during a discussion-table meeting with a prospective client as are set forth in this Opinion with respect to lawyer open houses and lawyer trade-show booths.

Issue No. 5: May a lawyer volunteer to provide one-on-one consultations with residents of a retirement or senior center concerning legal topics, initiate one-on-one in-person communications with residents of the center in their rooms or common areas to discuss their legal questions or concerns, and accept legal engagements proposed by such residents who discuss legal topics one on one with the lawyer?

Opinion: No. The lawyer has engaged in direct in-person solicitation of professional employment when the lawyer initiates uninvited one-on-one contact to discuss legal topics with residents of the center.

Issue No. 6: If a lawyer volunteers to answer questions of members of the public participating in a Utah State Bar-sponsored one-on-one question-and-answer session, such as a Bar-sponsored telethon (in-person telephonic contact) or the Bar-sponsored Tuesday Night Bar (face-to-face contact), may the lawyer provide to a member of the public his name and telephone number during the Bar-sponsored communication and accept professional employment for a fee offered by a member of the public

during or after the Bar-sponsored communication?

Opinion: No. The Bar's current policies concerning such Bar-sponsored programs prohibit lawyer volunteers from accepting professional employment resulting from discussions with members of the public during the program, unless the professional employment is accepted on a pro bono basis. If the Bar's policies concerning such Bar-sponsored programs did not prohibit a lawyer from accepting professional employment on a for-fee basis resulting from the programs, and the lawyer complied with the requirements of Rule 7.3(a) that prohibits in-person solicitation of professional employment of persons the lawyer could, upon a request initiated by the member of the public, provide his address and telephone number and accept professional employment on a for-fee basis during or after the Bar-sponsored communication.

Issue No. 7: If a relative or close friend of a prospective client requests that the lawyer telephone the prospective client to offer to provide legal representation, is it ethical for the lawyer to telephone the prospective client and to offer to provide legal representation?

Opinion: Generally no, unless the relative or friend of the prospective client requesting the lawyer to make the contact is the agent of the prospective client. To satisfy this requirement, a lawyer must make an objective, reasonable good-faith determination that the person is actually the agent of the prospective client. Absent this determination, it is a prohibited in-person solicitation for the lawyer to telephone the prospective client to provide legal representation for pecuniary gain.

Background: The Committee has received several requests regarding the ethics of certain client-development activities generally described as law-related seminars, group question-and-answer sessions on law-related topics, trade-show booths, discussion tables, uninvited one-on-one question-and-answer sessions on law-related topics and participation in Utah State Bar-sponsored legal assistance programs. The Committee has also received a request for an opinion on the ethics of in-person contact of prospective clients referred to the lawyer by the family or close friends of the prospective client. Unless otherwise indicated, the Committee has assumed in the analysis of each of these requests that (i) the prospective client is a person with whom the lawyer has no family or prior professional relationship and (ii) a significant motive for the lawyer's conduct is pecuniary gain and not to advance any constitutionally protected associational interests.

Issue No. 1 Analysis: Rule 7.3(a) prohibits in-person and telephonic communication directed to a specific recipient with whom the lawyer has no family or prior professional relationship soliciting professional employment when a

significant motive for the lawyer's doing so is pecuniary gain. (fn2)

Unlike the rules in some other states, the Utah Rules of Professional Conduct do not define the term "solicit" as this term is used in Rule 7.3(a). We believe that "solicit" in this context means a communication initiated by the lawyer with respect to the lawyer's availability to provide or to accept professional employment. (fn3) The term "solicit" necessarily includes an offer initiated by the lawyer to provide or to accept professional employment and the unrequested advice or recommendation of the lawyer that the lawyer be engaged to provide professional services. (fn4)

Rule 7.3 prohibits only solicitations to provide legal services. (fn5) An invitation to attend a law-related seminar without any communication of the lawyer's availability to accept professional employment is not a solicitation of professional employment. Therefore, a lawyer may invite attendance at a law-related seminar sponsored by the lawyer or by others by telephone or by direct in-person communication, so long as the lawyer does not communicate a message or offer concerning the availability of the lawyer to accept professional employment. (fn6) If the invitation contains such a message or offer, the invitation must be made by mail and must comply with Rules 7.1, 7.2 and 7.3(b).

A lawyer may appear and make presentations at a law-related seminar provided he does not engage in in-person solicitation prohibited by Rule 7.3(a). Therefore, a lawyer may not communicate the lawyer's availability to provide professional employment, offer to provide or accept professional employment or recommend that the lawyer or the lawyer's firm be employed to provide legal services. (fn7) The lawyer may distribute or offer in person to each attendee of the seminar, with or without fee, literature or video tapes concerning the legal issues addressed at the seminar that may state the lawyer's name, firm affiliation, address and telephone number. (fn8) Literature or video tapes offered in person to each attendee may not communicate the lawyer's availability to provide or accept professional employment. (fn9) Therefore, the lawyer's business card, brochures or other endorsements of the lawyer or the lawyer's law firm should not be generally distributed in person to attendees of law-related seminars. (fn10) If an attendee of a law-related seminar initiates a request to the lawyer to receive literature or video tapes that communicate the lawyer's availability to provide or to accept professional employment, the lawyer may ethically provide such materials to the attendee. Letters and brochures offering the lawyer's legal services may be mailed by the lawyer after the seminar to the attendees of the seminar. (fn11)

A lawyer may not provide individualized legal advice during the course of a law-related seminar. (fn12) By doing so, the lawyer would be providing legal services. In response to questions by attendees, the lawyer must endeavor to respond generally so as to create no impression that the lawyer has accepted professional employment on behalf of an attendee. While the lawyer may not initiate a recommendation of the lawyer's engagement by any attendee of the seminar, he may recommend, when appropriate, that an attendee of the seminar consult with a lawyer of the attendee's own choosing.

A lawyer may meet one on one with an attendee of the seminar, when such a contact is initiated by an attendee. In private sessions with attendees, if a request for individualized legal advice is initiated by the attendee, the lawyer may provide individualized legal advice. (fn13) The lawyer may accept professional employment offered by an attendee of the seminar, either offered privately at the seminar or after the seminar, provided the lawyer has not initiated the offer by engaging in in-person solicitation in violation of Rule 7.3(a). (fn14)

Some state bar associations have placed additional restrictions on lawyer participants at law-related seminars. The Committee chooses not to adopt these additional restrictions. (fn15)

Issue No. 2 Analysis: The Committee does not see a meaningful distinction between a group question-and-answer session concerning legal topics and a law-related seminar. For this reason, the Committee believes the analysis of this issue is the same as the analysis of Issue 1, law-related seminars, and that the ethical restraints on the lawyer's conduct are the same. (fn16)

Issue No. 3 Analysis: It is not unethical for a lawyer to purchase booth space at a trade show. So long as advertisements attached to or near the booth space comply with Rules 7.1 and 7.2, it is not unethical for the lawyer to display print advertisements of the lawyer's availability to accept legal employment. This is equivalent to outdoor advertising authorized by Rule 7.2. What distinguishes booth space at a trade show from outdoor advertising is the presence of the lawyer at the booth to engage in one-on-one oral communications with attendees of the trade show.

Other state bar associations are divided on what activities a lawyer at a trade-show booth may ethically engage in. Some permit the lawyer to initiate in-person offers to provide legal services to anyone who visits the booth and voluntarily engages in communications with the lawyer. (fn17) These opinions appear to view the booth as an extension of the lawyer's office. The presumption is that a lawyer is free to engage in in-person solicitation of those

who walk into a lawyer's office to discuss legal services.

Some bar associations prohibit the lawyer from solicitation of persons with no family or prior professional relationship with the lawyer who visit the booth. This, therefore, prohibits the general in-person distribution from the booth of brochures, business cards and other writings communicating the lawyer's availability to accept professional employment. (fn18) These opinions reason that general in-person distribution of brochures and initiating offers to provide professional services from the trade show booth is not unlike a lawyer standing on a street corner and passing out brochures and offering to provide legal services to each passerby. These opinions are concerned with the potential for undue influence, harassment and fraud that may occasion one-on-one encounters between the lawyer and the public making their way past the lawyer's booth.

The Committee believes that visits to a lawyer's trade-show booth should be likened to visits to a lawyer's office during an advertised open house. Non-clients who attend an advertised lawyer open house do not reasonably anticipate that they will be subjected to in-person solicitation of professional employment. (fn19) For this reason, it is unethical for lawyers to engage in in-person solicitation of such persons. (fn20) These occasions afford the lawyer the opportunity to meet prospective clients and for prospective clients to meet the lawyer. The lawyer may discuss legal topics with the attendees and may, when the request is initiated by the prospective client, privately provide individualized legal advice. (fn21)

The lawyer may not initiate an offer to provide or to accept professional employment. He is free to distribute in-person business cards, brochures and other self-promoting literature to an attendee of an open house who requests the literature, but may not otherwise distribute literature in person that communicates the lawyer's availability to accept professional employment to those in attendance. (fn22) The lawyer may later mail the brochures and other literature to those who attend the open house. So long as the lawyer does not engage in in-person solicitation in violation of Rule 7.3(a), the lawyer may accept professional employment from attendees of the open house.

The Committee believes that the same analysis applies to trade-show booths. The lawyer may get acquainted with those who visit the booth, may discuss legal topics generally and may, when the request is initiated by the prospective client, privately provide individualized legal advice. The lawyer may not initiate in-person communications about the lawyer's availability to accept professional employment. The lawyer may not in person distribute business cards, brochures or other literature communicating the lawyer's availability to accept professional employment unless the person visiting the

booth initiates the request for this information. So long as the lawyer does not engage in in-person solicitation in violation of Rule 7.3(a), he is free to accept professional employment offered by those who visit the booth.

Issue No. 4 Analysis: The Committee believes that a table set up by a lawyer at a retirement or senior center for the purpose of meeting with residents of the center who voluntarily visit the lawyer's table to discuss legal topics is indistinguishable from a lawyer's open house or a booth set up by a lawyer at a trade show. The analysis of this issue is the same as the analysis of Issue No. 3, and the ethical restraints on the lawyer's conduct are the same as the restraints on a lawyer's holding an open house or setting up a trade-show booth.

Issue No. 5 Analysis: The lawyer's conduct in initiating uninvited communications with residents of the senior center, whether in their rooms or in common areas of the center, is distinguishable from establishing a table in a common area of the senior center. When the lawyer initiates the contact, the resident is subjected to the uninvited presence of the lawyer in a one-on-one encounter. This situation is "fraught with the possibility of undue influence, intimidation and over-reaching." (fn23) The residents of the senior center are subjected to "the private importuning of a trained advocate, in a direct interpersonal encounter" which was wholly uninvited by the resident. (fn24) Because the communications are private and oral and not visible or otherwise open to public scrutiny, it is nearly impossible for the lawyer's conduct to be regulated. The potential for abuse inherent in this situation justifies a prophylactic prohibition of the acceptance of legal representation offered by the residents of the senior center under these circumstances, unless the representation is pro bono. (fn25)

It may be argued that such uninvited one-on-one contact to discuss legal topics of interest to the residents of the senior center is not solicitation unless the lawyer communicates his availability to accept legal employment. It may also be argued that, if the resident initiates a request for individualized legal advice or to engage the lawyer to provide legal services, then the professional employment has not been obtained through solicitation in violation of Rule 7.3(a). The Committee is not persuaded by such arguments. These arguments are similar to the analysis set forth earlier in this Opinion for law-related seminars, group question-and-answer sessions, client open houses and trade-show booths and discussion tables. However, in each of these previously discussed modes of lawyer communication, the prospective clients have invited the communication. While the one-on-one communications at the lawyer open house, lawyer trade-show booth and discussion table are also fraught with the danger of undue influence, intimidation and over reaching, and are also private and not open to public scrutiny, they are at least

invited communications. When weighing the rights and benefits of the public in receiving education and direction on legal topics with the potential for lawyer abuse, the Committee finds the balance in favor of permitting one-on-one communications at lawyer open houses, trade-show booths and discussion tables because the communications are invited by the prospective client.

In *Shapiro v. Kentucky Bar Association*, the United States Supreme Court distinguished solicitation by targeted mail from in-person solicitation, stating: "In assessing the potential for over reaching and undue influence, the mode of communication makes all the difference." (fn26) We agree, but further note that uninvited one-on-one communication is fraught with the most danger of abuse. It is this form of communication to attract professional employment that Rule 7.3(a) was intended to prevent. A lawyer may not accept professional employment resulting from such uninvited one-on-one contacts, unless the representation is solicited and provided on a pro bono basis.

Issue No. 6 Analysis: Bar-sponsored telethons and the "Tuesday Night Bar" result in in-person communications by members of the public with lawyers similar to the lawyer open house, trade-show booth and discussion table communications discussed earlier in this Opinion. There is, however, one important distinction. These events are sponsored and advertised to the public by the Bar. Lawyers volunteering to participate in these Bar-sponsored programs are, therefore, subject to the Bar's rules, regulations and policies regarding the program, in addition to the Utah Rules of Professional Conduct.

Each participant in the Tuesday Night Bar Program receives a policy statement which describes the program as being designed to provide preliminary counseling and general legal information and, if appropriate, referral to a lawyer using the Bar's Lawyer Referral Service. The policy statement further states: "[The program] is not intended to create an on-going attorney-client relationship between the participants Attorneys shall not take clients and/or cases from the Program unless the attorney does so on a pro bono basis." The Bar has also informally indicated it intends to apply a similar policy statement regarding Bar-sponsored telethons.

Therefore, under the current Bar policies, a lawyer volunteer participating in the Bar-sponsored Tuesday Night Bar or a telethon program may not accept legal employment resulting from communications with members of the public during the program, unless the representation is on a pro bono basis. If there were no Bar policy preventing a lawyer participant from accepting professional employment on a for-fee basis from members of the public with whom the lawyer has made contact during a Bar-sponsored program, the lawyer would be governed by the same limitations as

discussed previously in this Opinion with respect to communications at lawyer open houses, trade-show booths and discussion tables.

Issue No. 7 Analysis: Rule 7.3(a) states in part: "A lawyer may not solicit in person, professional employment from a prospective client with whom the lawyer has no family or prior professional relationship, when a significant motive for the lawyers doing so is the lawyer's pecuniary gain." Thus, the lawyer may not generally communicate in person with the prospective client and offer to provide legal services, even if the lawyer has been requested by a friend or close relative of a prospective client to make the communication. (fn27)

However, if the person requesting the lawyer to contact the prospective client is the prospective client's agent, then it would not be unethical for the lawyer to contact the prospective client in person to offer to provide professional services. In that case, the in-person contact has been invited by the prospective client. To satisfy this requirement, a lawyer must make an objective, reasonable good-faith determination that the person is actually the agent of the prospective client. (fn28)

In these circumstances, it would be best for the lawyer to advise the person referring the prospective client that the prospective client should contact the lawyer and request the lawyer's professional services. Otherwise, the lawyer runs the risk that the prospective client's friend or family member is not authorized by the prospective client to request the lawyer's direct in-person communication with the prospective client.

Footnotes

1. We assume in this Opinion that the various persons who may be in attendance are not persons "with whom the lawyer has [a] family or prior professional relationship" and that any solicitation would be significantly motivated by "the lawyer's pecuniary gain." Otherwise, the lawyer is not constrained by the provisions of Rule 7.3, which forms the foundation of our analysis.

2. In Opinion No. 127, the Committee discussed Rule 7.3(a) and the constitutional limitations on the rule. Utah Ethics Advisory Op. 127, 1994 WL 579847 (Utah St. Bar).

3. See California 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").

4. See ABA Model Code of Professional Responsibility, DR2-104(A).

5. Utah Ethics Advisory Op. 97-03, at 2, 1997 WL 223849 (Utah State Bar).

6. Los Angeles Co. Bar Assoc., Formal Op. 494, ABA/BNA Lawyer's Manual on Professional Conduct 1101:1702 (Oct. 19, 1998).

7. Some state bar associations have allowed lawyers to make generalized statements at law-related seminars regarding their availability to accept professional employment. *See, e.g.*, Ohio State Bar Assoc., Op. 94-13, ABA/BNA Lawyer's Manual on Professional Conduct 1001:6862 (Dec. 2, 1994); Ariz. State Bar Assoc., Op. 87-23, ABA/BNA Lawyer's Manual on Professional Conduct 901:1408 (Oct. 26, 1987). Arizona allows lawyer presenters at law-related seminars to offer to provide legal services with or without fee, if no pressure or coercion is exercised upon attendees at the seminar. We do not agree with these opinions. We believe such conduct constitutes in-person solicitation prohibited by Rule 7.3(a).

8. Ill. State Bar Assoc., Op. 96-01, 1996 WL 466449.

9. Mass. State Bar Assoc., Op. 86-3, ABA/BNA Lawyer's Manual on Professional Conduct 901:4601 (Nov. 25, 1996); Los Angeles Co. Bar Assoc., Formal Op. 494.

10. The Committee does not believe that Rule 7.3(a) precludes lawyer sponsors or presenters at law-related seminars from leaving business cards, brochures or other literature communicating the lawyer's availability to accept professional employment at tables where these materials may be picked up by any attendee choosing to do so. However, the lawyer may not in any way promote or encourage attendees in person to pick up such written materials.

11. S.C. State Bar Assoc., Op. 97-05, ABA/BNA Lawyer's Manual on Professional Conduct 1101:7904 (April 1997).

12. Ohio State Bar Assoc., Op. 94-13, ABA/BNA Lawyer's Manual on Professional Conduct 1001:6862 (Dec. 2, 1994); Ala. State Bar Assoc., Op. 87-119, ABA/BNA Lawyer's Manual on Professional Conduct 901-1032 (Sept. 29, 1987); Penn. State Bar Assoc., Op. 93-42A, ABA/BNA Lawyer's Manual on Professional Conduct 1001:7326 (June 2, 1993).

13. R.I. State Bar Assoc., Op. 94-39, ABA/BNA Lawyer's Manual on Professional Conduct 1001:7834 (June 22, 1994); Penn. State Bar Assoc., Op. 93-42A. By providing individualized legal advice, the lawyer has created an attorney-client relationship and must comply with the Rules of Professional Conduct, including the conflict-of-interest Rules 1.7, 1.9 and 1.10, and Rule 1.6, regarding client confidences.

14. Wis. State Bar Assoc., Op. E-94-4, ABA/BNA Lawyer's Manual on Professional Conduct 1001:9104 (Nov. 18, 1994); Ohio State Bar Assoc., Op. 94-13, ABA/BNA Lawyer's Manual on Professional Conduct 1001:6862 (Dec. 2, 1994); Miss. State Bar Assoc., Op. 156, ABA/BNA Lawyer's Manual on Professional Conduct 901:5108 (Dec. 2, 1988); Penn. State Bar Assoc., Op. 89-32, ABA/BNA Lawyer's Manual on Professional Conduct 901:7318 (undated).

15. Some state bar associations require that lawyer participants be competent in the area of law addressed at the seminar. Tex. State Bar Assoc., Op. 489, 57 Tex. B.J. 372 (1994). Although lawyers are encouraged not to make presentations in areas of the law in which they are not competent, a law-related seminar is not the provision of legal services and is therefore not subject to Rule 1.1. Some state bar associations require that the seminar be educational, not promotional. Ind. State Bar Assoc., Op. 10 of 1986, ABA/BNA Lawyer's Manual on Professional Conduct 901:3303 (undated); Tex. State Bar Assoc., Op. 489. To the extent this limitation is intended to be more restrictive than a prohibition on in-person solicitation, it is not required by the Rules and is constitutionally suspect. *See Florida Bar v. Went for It, Inc.*, 515 U.S. 618 (1995); *Edenfield v. Fane*, 507 U.S. 761 (1993). A requirement in some states is that the sponsorship of the seminar be disclosed. To the extent that a failure to disclose the sponsorship of the seminar may be misleading, a lawyer may be required to disclose this fact to comply with Rule 7.1. However, Rule 7.1 applies only to the advertisement or promotion of a law-related seminar which communicates the lawyer's availability to accept professional employment.

16. *See R.I. State Bar Assoc.*, Op. 96-21, ABA/BNA Manual of Professional Conduct 1101:7804 (Sept. 12, 1996) (lawyer may telephone administrators of senior centers to offer a lecture series targeted specifically for senior citizens).

17. *See, e.g., Nassau Co. [N.Y.] Bar Assoc.*, Op. 90-7, ABA/BNA Lawyer's Manual on Professional Conduct 901:6274 (Mar. 14, 1990) (authorizing lawyer to offer legal services from a booth at a shopping center so long as lawyer complies with advertising rules in advertising minimum fees for services and protects against disclosure of client confidences).

18. Penn. State Bar Assoc., Op. 88-214, ABA/BNA Lawyer's Manual on Professional Conduct 901:7316 (undated) (distribution of firm brochure and contract samples from trade show booth is in-person solicitation); Kan. State Bar Assoc., Op. 98-4, ABA/BNA Lawyer's Manual on Professional Conduct 1101:3804 (April 2, 1998) (passing out firm brochures at trade show to those who pass

by the trade show booth is in-person solicitation).

19. This Opinion assumes that the invitation to a lawyer's open house does not specifically invite the public to attend for the purpose of being solicited to provide professional employment to the lawyer. The Committee believes that non-clients who attend an open house in response to an invitation that states that the non-clients will be solicited have, in turn, invited the in-person solicitation. It would, therefore, not be unethical for a lawyer to make an in-person solicitation to such a person.

20. N.C. State Bar Assoc., Op. 146, 1992 WL 753128 (Jan. 15, 1993); Ore. State Bar Assoc., Op. 1991-35, 1991 WL 279176 (July, 1991); see also R.I. State Bar Assoc., Op. 89-14, ABA/BNA Lawyer's Manual on Professional Conduct 901:7805 (July 20, 1989) (lawyer may attend social gatherings to meet prospective clients, but may not engage in in-person solicitation).

21. When providing individualized legal advice, the lawyer must comply with all Rules of Professional Conduct, including the conflict-of-interest Rules 1.7, 1.9 and 1.10 and Rule 1.6 concerning client confidences.

22. The lawyer may make business cards, brochures and other literature communicating the lawyer's availability to accept professional employment available at a table to those in attendance who voluntarily, without in-person encouragement, choose to pick up the materials.

23. Rule 7.3 cmt.

24. *Id.*

25. *Ohralik v. Ohio State Bar*, 436 U.S. 447 (1978) (prophylactic rule against in-person solicitation does not violate the rights of free expression afforded by the First and Fourteenth Amendments of the United States Constitution even in the absence of a showing of any specific harm to the prospective clients). Accord, *Shapero v. Kentucky Bar Assoc.*, 486 U.S. 466 (1988). If the representations are accepted on a pro bono basis, then Rule 7.3(a) would not be applicable. The primary motive of the lawyer would not be pecuniary gain.

26. 486 U.S. 466, 475 (1988)

27. *Norris v. Alabama State Bar*, 582 So. 2d 1034 (Ala. 1991) (lawyer suspended from practice for two years after delivering to a funeral home a funeral wreath and a letter addressed to the widow offering assistance after having received an anonymous telephone call from someone purporting to be a friend of the widow stating that she required legal services and did not have sufficient funds for a funeral wreath); *Spence, Payne, Masington & Grossman, P.A. v. Gerson*, 483 So. 2d 775 (Fla. App. 1986) (unethical

in-person solicitation for a lawyer to send an investigator to obtain a retainer agreement from a widow after receiving a telephone call from a client of the lawyer and a close friend of the widow requesting that the lawyer offer to provide professional services to the widow).

28. A contrary opinion may be found in the *Spence, Payne* case.

Rules Cited:

7.17.27.3