

OPINION 521

October 1997

Question

Whether a Texas attorney violates the Texas Disciplinary Rules of Professional Conduct by mailing a written communication in the form of a letter accompanied by a videotape to a prospective client whose identity is discovered through a newspaper article?

Statement of Facts

A Texas lawyer intends to mail a written communication in the form of a letter accompanied by a videotape to a prospective client who was injured and whose identity was discovered through a newspaper article.

The purpose of the mailing is to obtain professional employment for the lawyer.

The letter serves as an introduction to the lawyer's services and directs the prospective client to view the videotape for further information regarding legal representation, the lawyer's qualifications, and general statements regarding damages. This opinion assumes the letter and videotape were not personalized for the individual recipient.

Discussion

[Rule 7.02](#)(a) provides in relevant part that, "a lawyer shall not make a false or misleading communication about the qualifications or the services of any lawyer or firm." [Rule 7.03](#) addresses prohibited solicitations and payments including, but not limited to, solicitations in person or by telephone contact "when profit for the lawyer is a significant motive and the solicitation concerns matters arising out of a particular occurrence, event, or series of occurrences or events." See paragraph one of the comment to [Rule 7.03](#).

[Rule 7.05](#) provides in pertinent part:

(a) A lawyer shall not send or deliver ... a written communication to a prospective client for the purpose of obtaining professional employment if;

1. the communication involves coercion, duress, fraud, overreaching, intimidation, undue influence, or harassment,
2. the communication contains information prohibited by [Rule 7.02](#) or fails to satisfy each of the requirements of [Rule 7.04](#)(a) through (c), and (h) through (o) that would be applicable to the communication if it were an advertisement in the public media, or
3. the communication contains a false, fraudulent, misleading, deceptive, or unfair statement or claim.

[Rule 7.05](#)(b) through (e) further states the necessary requirements which a written solicitation communication used to obtain professional employment must satisfy. The exceptions contained in [Rule 7.05](#)(e) 1-4 do not apply in the stated fact situation.

The use of a videotape by a lawyer to obtain professional employment must be subject to the same scrutiny as other forms of communication utilized to obtain professional employment. As noted in paragraph two of the comment to Rule 7.02, "[w]hatever means are used to make known a lawyer's services, statements about them should be truthful and non-deceptive."

This committee does not render advisory opinions regarding the actual content of communications utilized by lawyers to obtain professional employment. See [Rule 7.07](#), which addresses review of public advertisements and written solicitations by the Lawyer Advertisement and Solicitation Review Committee.

Assuming, but without deciding, the letter and videotape are general in nature and not customized for the prospective client, the use of the letter and videotape is comparable with the use of the mass-produced form letter and accompanying brochure described in Ethics [Opinion 420](#) (47 *Tex. Bar J.*, p. 1383 (Dec. 1984)), which held in part that "printed brochures that are obviously mass produced and not individualized communications directed to specific recipients and that are mailed to named individual recipients are permissible" under the rules pertaining to advertising by lawyers. The videotape format per se is not, in the opinion of this committee, barred from use as a means to obtain professional employment.

Since the decision in *Shapero v. Kentucky Bar Association*, 486 U.S. 466, 108 S. Ct. 1916, 100 L.Ed. 2d 475 (1988), direct mail solicitation in the form of a non-personalized form letter by attorneys is afforded constitutional protection as commercial speech. Still, the state retains its authority to regulate the content of such solicitation to protect the public from false or misleading communications concerning a lawyer's services. See Ethics [Opinion 470](#) (55 *Tex. Bar J.*, p. 287 (March 1992)), holding permissible under the rules the mailing of "a letter or firm brochure to a potential client known to be in need of particular services," subject to the lawyer's compliance with the rules regulating a lawyer's communication with a prospective client. If the requirements of Rules 7.02, 7.04, and 7.05 are satisfied, a communication in the form of a non-customized videotape and letter to a prospective client whose identity was discovered through a newspaper article for the purpose of obtaining professional employment is not prohibited under the rules. As long as the attorney satisfies the standards stated in each of those rules, the mailing of the letter and videotape are not prohibited in the opinion of this committee.

Conclusion

[Rules 7.02](#), [7.04](#), and [7.05](#) do not expressly prohibit communication being disseminated in the form of a non-personalized letter and non-personalized videotape mailed to a prospective client whose identity was discovered through a newspaper article for the purpose of obtaining professional employment. The contents of the videotape must meet the standards set forth in Rules 7.02, 7.04, and 7.05 to have the benefit of constitutional protection as commercial speech.