



## Committee on Professional Ethics

Opinion 857 (3/17/11)

**Topic:** In-person distribution of announcements of law firm's name change.

**Digest:** Distribution of law firm's announcements by a lawyer's employee must not involve in-person contact with recipients, or the distribution will constitute forbidden in-person solicitation.

**Rules:** 7.1, 7.3, 7.5

### QUESTION

1. May an attorney have her employee personally distribute professional announcements to nearby residences?

### OPINION

2. The inquiring attorney has changed the name of her law firm and wishes to have her paralegal personally deliver an announcement of the renaming to residences near her office.

3. Rule 7.5(a)(2) of the New York Rules of Professional Conduct (the "Rules") permits lawyers to use professional notices announcing a law firm's name change, provided the announcements comply with Rule 7.1 ("Advertising"). However, the methods of distributing such announcements are subject to some restrictions. In particular, Rule 7.3(a) prohibits lawyers from engaging in solicitation by "in-person or telephone contact" unless the recipient is "a close friend, relative, former client or existing client." Rule 7.3(b) defines "solicitation" to mean, in pertinent part:

any advertisement initiated by or on behalf of a lawyer or law firm that is directed to, or targeted at, a specific recipient or group or recipients, or their family members or legal representatives, the primary purpose of which is the

retention of the lawyer or law firm, and a significant motive for which is pecuniary gain.

4. This Committee addressed the issue of the hand-delivery of advertising in N.Y. State 659 (1994). There, the inquiring attorney asked whether he could allow his law firm's advertisement to be included in an "information package" to be distributed by a car dealer to car buyers. The Committee concluded that hand-delivery of the packet to car buyers by the dealer would not transform the distribution into a prohibited in-person solicitation by the lawyer. We said:

The Committee ... does not perceive any substantive difference between sending an advertisement through the mail and having it handed to a recipient as part of an information package. It is presumed that the delivery of the information package will not be made by the attorney (and thus would not involve in person solicitation of a prospective client by the attorney), and that the car dealer or his employee will deliver the information package but not discuss the advertisement with the purchaser.

5. The Committee's conclusion in N.Y. State 659 that the car dealer's personal distribution of the lawyer's advertisement was not a forbidden in-person solicitation rested on the facts that the car dealer was not being paid by the attorney and would not discuss the advertisement with car buyers. Here, however, the proposed delivery agent is the attorney's own paid employee and agent (her paralegal), so N.Y. State 659 is not dispositive.

6. The lawyer cannot have her paralegal do what the lawyer herself is forbidden to do, so the propriety of the proposed distribution by the lawyer's paralegal rests on whether the paralegal's hand-delivery of the announcement constitutes in-person solicitation in violation of Rule 7.3(a). See Rule 8.4(a) ("A lawyer or law firm shall not (a) violate or attempt to violate the Rules of Professional Conduct . . . through the acts of another").

7. The inquirer contends that the delivery would not meet the definition of "solicitation" in Rule 7.3(b) because the announcement is not an "advertisement" within the meaning of Rule 1.0(a). It is not an advertisement or solicitation, the inquirer says, because its "primary purpose" is not "pecuniary gain." We reject that contention. The inquirer is not offering her services pro bono, and the primary motive is surely the hope that once the recipients of the announcement know she is in the neighborhood, some of them will retain her. See Rule 7.3, Comment [2] (contrasting a lawyer's advertisement "that has as a significant motive for the lawyer to make money" with "a public-interest lawyer offering pro bono services.") We therefore conclude that the name-change announcement is an "advertisement" within the meaning of Rule 1.0(a) because it is a communication by the inquiring lawyer about her firm whose "primary purpose ... is the retention of the lawyer or law firm." Similarly, we conclude that the announcement is a

“solicitation” within the meaning of Rule 7.3(b) because “a significant motive ... is pecuniary gain” and it is “directed to, or targeted at,” a specific recipient or recipients. (Comment [3] to Rule 7.3 notes that any advertisement that is made by in-person or telephone contact is “directed to or targeted at” a specific recipient or recipients.)

8. Given that the name-change announcement is a solicitation, we see two possibilities. On one hand, if the inquirer proposes to have her paralegal deliver these announcements in a manner that will bring the paralegal into personal contact with the residents, the Committee concludes that the delivery will constitute an impermissible in-person solicitation (unless the recipients are close friends, relatives, former clients, or existing clients). On the other hand, if the paralegal will simply leave a name-change announcement at a residence – for example, by hanging the announcement on a door handle or placing it on a porch – and if the paralegal has no personal contact with the recipients, then the paralegal’s delivery of the announcements will not constitute forbidden in-person solicitation. The ban in Rule 7.3(a) is not against all solicitation – it is only against in-person solicitation. The inquirer must avoid in-person solicitation through her paralegal.

9. Rule 7.3 imposes various additional requirements and restrictions on any solicitation directed to a recipient in New York State, but the inquirer has not raised any issues concerning those requirements and restrictions, so we do not address them. We assume that the inquirer will study and abide by all applicable provisions of Rule 7.3.

### **CONCLUSION**

10. Provided the announcements are delivered without any personal contact between the inquirer's paralegal and the recipients, provided the announcements conform to the requirements of Rule 7.1, and provided the inquirer abides by all applicable requirements and restrictions of Rule 7.3, the inquirer may cause her paralegal to deliver the name-change announcements to residences.

(43-10)