



New York State Bar Association Committee on Professional Ethics

Opinion 947 (11/14/12)

Topic: Purchase of mailing list names for use in connection with offer to receive email educational newsletter.

Digest: It is ethically permissible for an attorney or law firm to purchase a list of names to whom emails from the firm will be sent offering each recipient the opportunity to join the law firm's email newsletter distribution system, which offers information about current legal topics and invitations to attend educational seminars provided by the firm, provided there is no solicitation for utilization of the firm's legal services.

Rules: 7.1, 7.1 (comments 1, 7 and 9); 7.2, 7.2 (comment 1); 7.3.

FACTS

1. The inquiring law firm proposes to purchase a list of names for the purpose of sending emails to those on the list, offering them an opportunity to "opt in" to the firm's email newsletter distribution system, through which the recipient would receive information about current legal topics and invitations to seminars provided by the firm. There will be no solicitation for utilization of the firm's legal services in the e-mails or at the seminars.

QUESTION

2. Is it ethically permissible for an attorney or law firm to purchase a list of names to whom emails will be sent, offering each recipient the opportunity to join the law firm's email newsletter distribution system, which offers information about current legal topics and invitations to attend educational seminars provided by the firm, provided there is no solicitation for utilization of the firm's legal services?

OPINION

3. The public's need for legal services is met only if people recognize their legal problems, appreciate the importance of seeking assistance, and have available the services of competent legal counsel. Attorneys are, therefore, encouraged "to educate people to recognize their problems to facilitate the process of intelligent selection of lawyers, and to assist in making legal services fully available." Rule 7.1 Comment 1. In addition, attorneys are urged to "participate in educational and public relations programs concerning the legal system with particular reference to legal problems that frequently arise." Rule 7.1 Comment 9.

4. Thus, the maintenance of a program to educate the public such as that proposed by the

inquiring attorney is a laudable exercise, and as long as the information disseminated is not “primarily about the lawyer or law firm (for example, the lawyer or law firm’s cases, personnel, clients or achievements)” the program and its elements (*e.g.* email newsletters and seminars) are not considered advertising. Rule 7.1 Comment 9. “A lawyer’s participation in an educational program is ordinarily not considered advertising because its primary purpose is to educate and inform rather than to attract clients.” Rule 7.1 Comment 9. See also, N.Y. State 830 (2009).

5. Because educational newsletters and seminars from law firms are not “advertisements” under Rule 7.1(a), and because a solicitation is by definition a subset of advertisements under Rule 7.3(b), the offering of a subscription to such newsletters and/or seminars is therefore not a solicitation and thus is not subject to Rule 7.3.

6. We find no Rule that prohibits a lawyer or firm from purchasing a list of names and addresses for the purpose of offering the lawyer’s or firm’s newsletter and/or educational seminars. Comment 1 to Rule 7.2 (which prohibits payment for referrals of clients) provides that the Rule “does not prohibit a lawyer from paying for advertising and communications permitted by these Rules, including the costs of print directory listings, online directory listings, newspaper ads, television and radio airtime, domain name registrations, sponsorship fees, banner ads and group advertising. A lawyer may also compensate employees, agents and vendors who are engaged to provide marketing or client development services, such as publicists, public relations personnel, marketing personnel and website designers.”

CONCLUSION

7. It is ethically permissible for an attorney or law firm to purchase a list of names to whom emails from the firm will be sent, offering each recipient the opportunity to join the law firm’s email newsletter distribution, which offers information about current legal topics and invitations to attend educational seminars provided by the firm, provided there is no solicitation for utilization of the firm’s legal services.

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