

ETHICS OPINION

RO-96-05

OFFICE OF GENERAL COUNSEL

QUESTION ONE:

Rule 7.3(b)(2)(v) of the Rules of Professional Conduct requires a lawyer who is sending out a direct mail letter to a prospective client to put the word "Advertisement" in 14-point red ink in the lower left hand corner of the envelope. If this aspect of the rule is complied with, is it permissible to put other words or terms on the envelope as well?

QUESTION TWO:

Rule 7.3(b)(2)(i) requires a lawyer to send to the General Counsel's Office a list of names and addresses of those persons to whom a direct mail solicitation letter has been sent. Can this requirement be satisfied by sending in a computer disk on which that information is contained?

ANSWER QUESTION ONE:

According to the Comment of new Rule 7.3, the purpose of requiring the word "Advertisement" on the envelope of a direct mail solicitation letter is to avoid the perception that the letter must be opened merely because it is from a lawyer, when it only contains a solicitation for legal business. It is the Commission's opinion that the addition of other words or terms on the envelope are nothing but attempts to subvert the recipient's option of disregarding a legal advertisement. Direct mail envelopes that contain extraneous terms are not permissible and would be in violation of Rule 7.3(b)(2)(v) of the Rules of Professional Conduct.

ANSWER QUESTION TWO:

The submission of computer disks containing the names and addresses of persons to whom direct mail letters have been sent does not comply with the filing requirement of Rule 7.3(b)(2)(i). The Commission interprets the term "list" as used in this rule to mean a

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written or printed series of names. The acceptance of computer disks creates storage problems, and more importantly, the risk of infecting the State Bar's computer system with a virus. The only way to access the information from a disk is to run it on a computer. The information on a printed list is immediately self-evident.

MLM/vf

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