

ADVISORY ETHICS OPINION 88-05

SYNOPSIS:

The general mailing to prospective clients of law office announcements indicating subject areas of practice is ethically permitted.

FACTS:

We have been asked to pass upon the ethical propriety of law office announcements that specify certain subject areas of practice, as well as the appropriateness of a general mailing of such announcements to nonclients.

The inquiring attorney recently moved to Vermont. He has experience in certain areas of practice and hopes to continue to concentrate in those areas.

The attorney has prepared an announcement which states that he is opening his office “for the general practice of law, including [enumerated subject areas].” He proposes to mail the announcement generally to attorneys as well as to other persons whose work is related to his areas of concentration.

ANALYSIS:

1. *Specification of Area of Concentration.* We conclude that an attorney may ethically specify areas of concentration in an announcement. This issue is squarely governed by DR 2-105, which provides:

A lawyer may communicate the fact that the lawyer practices or does not practice in particular fields of law and that the lawyer concentrates in one or more fields of law. A lawyer shall not state that the lawyer is a specialist except in the areas of patent or admiralty law if the lawyer is admitted to engage in patent practice before the United States Patent and Trademark Office or is engaged in admiralty practice, or where the lawyer has met the requirements for recognition as a specialist, as determined by the Supreme Court of Vermont

Here, where the attorney is simply listing areas in which he will concentrate his practice, and is not holding himself out as a “specialist” in those areas, no ethical problem is presented.¹

2. *General Mailing of Announcements.* We also conclude that the attorney may make a mailing of announcements to persons who might be generally interested in or have some general connection with his areas of intended concentration. This issue is controlled by DR 2-104, which states:

A lawyer may not initiate communication with a prospective client with the purpose of obtaining professional employment, except that communications may be made:

(3) by means of letters addressed or advertising circulars distributed generally to persons not known to need legal services of the kind provided by the lawyer in a particular matter, but who are so situated that they might in general find such services useful.

Such communications shall not be initiated in any manner which would violate Disciplinary Rule 2-101, or if the person being contacted has made known to the lawyer the desire not to receive communications from the lawyer, or if the lawyer knows or reasonably should know that the communication involves coercion, duress or harassment.

The mailing contemplated here comes within the protections of DR 2-104(3).

The rule permits mailings to be “targeted” to the limited extent that they are directed towards persons who might be expected to have some general interest in an attorney’s services. Conversely, mailings specifically targeted to persons known to need services in a particular matter—such as a mailing to victims of an airline crash—would be prohibited.² As EC 2-10A explains, the Rule encourages mailings that inform while discouraging mailings that importune. In so doing, it protects persons who might be vulnerable to an attorney’s unsolicited solicitation.

Those concerns do not apply to the general mailing contemplated here.

¹ See also Opinion Nos. 79-11 & 79-17 (discussing distinction between “concentration” and “specialization”).

² But see *Shapiro v. Kentucky Bar Association*, 56 U.S.L.W. 4531 (U.S. June 13, 1988) (No. 87-16) (holding that ban on targeted advertising imposed by Model Rule 7.3 violates First Amendment).