

State Bar of South Dakota

Ethics Opinion 95-13

September 13, 1995

- *Rules: 7.2, 7.3*
- *Subject: Advertisements; Yellow pages; Direct mail solicitation*
- *Summary: An attorney can send copies of his advertising in the yellow pages to non-clients without any further information as long as the original directory advertising complies with the rules regarding advertising and direct contact.*

You have requested an opinion from this Committee as to whether or not the firm with whom you are employed may send a printed copy of the advertisement the firm places in the yellow pages to randomly selected people who are not present clients of the firm. No letter would accompany the printed ad.

OPINION

It is the opinion of this Committee that there is nothing improper about your proposed direct mail advertisement provided that you abide by the procedural safeguards of Rule 7.2 and 7.3. Under Rule 7.2(c), a copy of your written communication “shall be kept by the advertising lawyer for two years after its last dissemination along with a record of when and where it was used.” Rule 7.3(c) requires you to deposit your written communication “no less than 30 days prior to its dissemination or publication with the secretary-treasurer of the South Dakota State Bar by mailing the same to the office of the State Bar in Pierre, postage prepaid, return receipt requested. Finally, Rule 7.3(d) provides:

Every written or recorded communication from a lawyer soliciting professional employment from a prospective client shall include the words “Advertising Material” on the outside envelope, on the first page of any written communication, and at the beginning and ending of any recorded communication. Where the communication is written, the label shall appear in a minimum 18 point type or in type as large as the largest type otherwise used in the written communication, whichever is larger. This labeling requirement shall not apply to mailings of announcements of changes in address, firm structure or personnel, nor to mailings of firm brochures to persons selected on a basis other than prospective employment.

Michael S. McKnight
Chair, Ethics Committee
State Bar of South Dakota