

**BAR ASSOCIATION OF ERIE COUNTY
COMMITTEE ON PROFESSIONAL ETHICS**

Opinion No. 13-03

Topic:	Disclosure and filing requirements of an attorney sending out targeted solicitations.
Digest:	Attorney is required to file solicitation with appropriate judicial district or department; keep a list of names and addresses of recipients for at least three years; disclose how attorney obtained name of recipient; disclose attorney's contact information and that solicitation is "attorney advertising."
Rules:	7.1(f)(h)(k); 7.3(b)(c)

QUESTION

May an attorney mail a written advertisement to just those persons he knows will need the services of a real estate attorney based on a review of the public records on the Multiple Listing Service?

OPINION

A written advertisement is a solicitation if it "is directed to, or targeted at, a specific recipient or group of recipients .. , the primary purpose of which is the retention of the lawyer or law firm, and a significant motive for which is pecuniary gain." Rule 7.3(b); see also Rule 7.3, Comment [3].

A solicitation directed to a recipient in New York State shall be subject to the following provisions:

- (1) At the time it is sent, a "copy of the solicitation shall.. .be filed with the attorney disciplinary committee of the judicial district or judicial department" of the attorney's principal office, Rule 7.3(c)(1);
- (2) "shall contain no reference to the fact of filing," Rule 7.3(c)(2);
- (3) If "directed to a predetermined recipient, a list containing the names and addresses of all recipients shall be retained by the [attorney]" for at least three years after dissemination, Rule 7.3(c)(3); and
- (4) If "made in writing... and directed to a predetermined recipient [and] prompted by a

specific occurrence involving or affecting a recipient, [the attorney] shall disclose how [he] obtained the identity of the recipient and learned of the recipient's potential legal need," Rule 7.3(f).

Further, a solicitation in the "form of a self-mailing brochure or postcard" must also contain the phrase "attorney advertising," Rule 7.1(f), include "the name, principal law office address and telephone number of the lawyer or law firm whose services are being offered," Rule 7.1(h), and a copy of which must be retained by the lawyer for a period of not less than three years, Rule 7.1(k).

CONCLUSION

Where an attorney mails solicitations to individuals listed on the Multiple Listing Service, she must indicate how she learned of the recipient's potential legal need and indicate that the solicitation is "attorney advertising," in addition to providing her name, principal office, address and telephone number. Further, the attorney must file the advertisement with the appropriate judicial department and keep a copy for her records for not less than three years.