

FORMAL OPINION NO 2005-35

[REVISED 2018]

Information about Legal Services: Greeting Cards and Open House

Facts:

Lawyer *A* would like to send greeting cards or letters to Lawyer *A*'s current and former clients, thanking them for employing Lawyer *A*.

Lawyer *B* would like to send greeting cards or letters to people who have referred clients to Lawyer *B*, in which Lawyer *B* would thank them for doing so.

Lawyer *C* would like to hold an open house, and invite both current and former clients and nonclients.

Questions:

1. Is the proposed conduct of Lawyer *A* ethical?
2. Is the proposed conduct of Lawyer *B* ethical?
3. Is the proposed conduct of Lawyer *C* ethical?

Conclusions:

1. Yes, qualified.
2. Yes, qualified.
3. Yes, qualified.

Discussion:

The proposed conduct of Lawyer *A* and Lawyer *B* is constitutionally protected. *See, e.g., Shapero v. Kentucky Bar Ass'n*, 486 US 466, 108 S Ct 1916, 100 L Ed 2d 475 (1988). Thus, no rule of professional conduct could prohibit this conduct unless the conduct was ancillary to some independent act of wrongdoing, such as improper in-person solicitation or making misrepresentations about a lawyer's services. *Cf.* OSB Formal Ethics Op No 2005-3 (rev 2018); OSB Formal Ethics Op No 2005-2 (rev 2018).

Given the nature of the proposed communications, we also do not believe that Lawyer A or Lawyer B must take any special steps to treat the thank-you notes as advertisements or as a solicitation of employment within the meaning of Oregon RPC 7.2(a), (c), or Oregon RPC 7.3.¹

The question relating to Lawyer C could give rise to situations involving solicitation within the meaning of Oregon RPC 7.3.² If such situations arise, Lawyer C must be careful to avoid any means of solicitation that would violate Oregon RPC 7.3.

Approved by Board of Governors, November 2018.

¹ Oregon RPC 7.2(a) and (c) provide:

(a) Subject to the requirements of Rules 7.1 and 7.3, a lawyer may advertise services through written, recorded or electronic communication, including public media.

....

(c) Any communication made pursuant to this rule shall include the name and contact information of at least one lawyer or law firm responsible for its content.

² Oregon RPC 7.3 provides:

A lawyer shall not solicit professional employment by any means when:

(a) the lawyer knows or reasonably should know that the physical, emotional or mental state of the subject of the solicitation is such that the person could not exercise reasonable judgment in employing a lawyer;

(b) the person who is the subject of the solicitation has made known to the lawyer a desire not to be solicited by the lawyer; or

(c) the solicitation involves coercion, duress or harassment.

COMMENT: For additional information on this general topic and related subjects, see *The Ethical Oregon Lawyer* § 2.4-4 (public relations) (OSB Legal Pubs 2015); and ABA Model RPC 7.1–7.3. See also OSB Formal Ethics Op No 2005-70 (rev 2015); OSB Formal Ethics Op No 2005-79 (rev 2018); OSB Formal Ethics Op No 2005-106 (rev 2016)