

IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE

IN RE: Tennessee Supreme Court Rule 8,
Disciplinary Rules 2-101 and 2-104

FILED

March 15, 1996

**Cecil Crowson, Jr.
Appellate Court Clerk**

ORDER

Upon review and consideration of the comments ~~received from the public at~~ large, members of the bar, and the judiciary, and pursuant to the Court's inherent authority to regulate the practice of law, Tennessee Supreme Court Rule 8, Disciplinary Rules 2-101 and 2-104 are hereby amended by deleting subsection (N) of Disciplinary Rule 2-101 in its entirety; and by deleting Disciplinary Rule 2-104 in its entirety and substituting instead the following:

DR 2-104. Direct Contact With Prospective Clients.

(A) **Definitions.** As used in this rule the following terms are defined as follows:

(1) "Solicit" means contact in person, by telephone, telegraph, facsimile, computer on-line transmission or by other communication directed to a specific recipient and includes any written form of communication directed to a specific recipient and not meeting the requirements of section (C) of this rule.

(2) "Written communication" means all forms of written communication including letter, telegraph, audio and video recording, facsimile, computer on-line transmission or other similar mode of communication.

(B) **Solicitation.**

(1) Except as provided herein, a lawyer shall not solicit professional employment from a prospective client with whom the lawyer has no family or current or prior professional relationship, in person or otherwise, when a significant motive for the lawyer's doing so is the lawyer's pecuniary gain; nor shall a lawyer permit employees or agents of the lawyer to solicit on the

lawyer's behalf; nor shall a lawyer enter into an agreement for or charge or collect a fee for professional employment obtained in violation of this rule.

(2) Notwithstanding the provisions of subsection (B)(1),

(a) A lawyer may accept employment that results from the lawyer's participation in activities designed to educate laypersons to recognize legal problems, to make intelligent selection of counsel, or to utilize available legal services if such activities are conducted or sponsored by a qualified legal assistance organization.

(b) A lawyer who is recommended, furnished or paid by a qualified legal assistance organization enumerated in DR 2-103(D)(1) through (4) may represent a member or beneficiary thereof, to the extent and under the conditions prescribed therein.

(c) Without affecting the lawyer's right to accept employment, a lawyer may speak publicly or write for publication on legal topics so long as the lawyer does not emphasize the lawyer's own professional experience or reputation and does not undertake to give individual advice.

(d) If success in asserting rights or defenses of a client in litigation in the nature of a class action is dependent upon the joinder of others, a lawyer may accept, but shall not seek, employment from those persons with whom the lawyer or the lawyer's agent or employee has communicated, either in person or by live telephone or computer on-line contact, for purpose of obtaining their joinder.

(C) Written Communication.

(1) A lawyer shall not send, or knowingly permit to be sent, on the lawyer's behalf or on behalf of the lawyer's firm or on behalf of a partner, an associate, or any other lawyer affiliated with the lawyer or the lawyer's firm, a written communication to a prospective client for the purpose of obtaining

professional employment if:

(a) a significant motive for the solicitation is the lawyer's pecuniary gain and the solicitation concerns an action for personal injury, worker's compensation or wrongful death or otherwise relates to an accident or disaster involving the person to whom the communication is addressed or a relative of that person, unless the accident or disaster occurred more than 30 days prior to the mailing or transmission of the communication or the lawyer has a family or current or prior professional relationship with the person solicited; or

(b) it has been made known to the lawyer that the person does not want to receive such communications; or

(c) the communication involves overreaching, coercion, duress, harassment, undue influence, intimidation, fraud, or wrongful interference with an existing contractual relationship between the person solicited and another lawyer; or

(d) any part of the communication is prohibited by DR 2-101, 2-102, or 2-105.

(2) Written communications to prospective clients for the purpose of obtaining professional employment are subject to the following requirements:

(a) Each communication, including envelopes and self-mailing brochures or pamphlets, shall include the words "THIS IS AN ADVERTISEMENT" in a prominent place at the beginning and end of each communication.

(i) In written communications sent by mail, telegraph, facsimile, or computer on-line transmission, the required wording shall appear in a conspicuous print size; and, the required wording shall appear on the outside envelope, if any,

and at the beginning and end of the written material. If the written communication is a self-mailing brochure or pamphlet, the "THIS IS AN ADVERTISEMENT" notice shall appear on the address panel of the brochure or pamphlet.

(ii) In video recorded communications, the required wording shall appear conspicuously in the communication for at least five (5) seconds at the beginning and five (5) seconds at the end of the communication; and the required wording of the audio portion of the video communication shall appear as required in subsection (C)(2)(a)(iii).

(iii) In audio communications, the required wording shall appear in tone, volume, clarity and speed of delivery at least equivalent to the clearest quality, tone, volume, clarity and speed of the audio elsewhere in the communication, at the beginning and end of the communication.

(b) A lawyer shall not state or imply that a communication otherwise permitted by these rules has been approved by the Tennessee Supreme Court or the Board of Professional Responsibility.

(c) If a contract for representation is mailed with the communication, the top of each page of the contract shall be conspicuously marked "SAMPLE" and the words "DO NOT SIGN" shall appear on the client signature line.

(d) Written communications shall not be in the form of or include legal pleadings or other legal documents.

(e) Any communication prompted by a specific occurrence involving or affecting the recipient or a member of the recipient's family shall disclose how the lawyer obtained the information

prompting the communication.

(f) A communication seeking employment by a specific prospective client in a specific matter shall not reveal on the envelope, or on the outside of a self-mailing brochure or pamphlet, the nature of the prospective client's legal matter.

(g) The first sentence of any written communication concerning a specific matter shall be: "If you have already hired or retained a lawyer for this matter, please disregard this letter."

(h) Communications mailed to prospective clients shall be sent only by regular U.S. Mail, not by registered, certified or other forms of restricted delivery, express delivery or courier.

(i) A copy of each written communication, together with a copy of any envelope used in conjunction with the communication, sent to prospective clients shall be filed with the Board of Professional Responsibility within three days after the dispatch of the communication. The lawyer dispatching the communication shall also file the name of the person contacted and the person's address, telephone number, or telecommunication address to which the communication was sent within three days after the dispatch of the communication. If communications identical in content are sent to two (2) or more persons, the lawyer may comply with this requirement by filing a single copy together with a list of the names and addresses of persons to whom the communication was sent. If the lawyer periodically sends the identical communication to additional persons, lists of the additional names and addresses shall be filed with the Board of Professional Responsibility no less frequently than monthly.