

Restating The Obvious

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Improper solicitation of clients by attorneys seems to be, again, rearing its head as an issue of the day. Complaints to the Lawyers Board alleging improper solicitation, especially among the immigrant communities, are on the rise.

Attorneys licensed to practice law in Minnesota ought not be surprised to learn that in-person or telephonic solicitation of clients is prohibited by the Minnesota Rules of Professional Conduct (MRPC).

Rule 7.3, MRPC, provides: "In-Person and Telephone Contact with Prospective Clients. A lawyer may not solicit professional employment from a prospective client with whom the lawyer has no family or prior professional relationship, by in-person or telephone contact, when a significant motive for the lawyer's doing so is the lawyer's pecuniary gain."

Also of note is Minn. Stat. sec. 481.03, which provides: "Attorneys shall not employ solicitors. No attorney at law shall, through any runner, agent or person not an attorney at law who is employed by the attorney, solicit a person to employ such attorney to present a claim for damages for personal injuries or for death, or to prosecute an action to enforce such a claim, and no attorney at law shall, directly or indirectly, give a promise to any such person other than an attorney at law any money, fee or commission in consideration of the employment of such attorney by a person having a claim for personal injuries or for death, or soliciting or procuring such person who has such claim to employ such attorney to present such claim or to prosecute an action for the enforcement thereof."

The prohibition of solicitation of clients is not new. In *In re Greathouse*, 248 N.W. 735 (Minn. 1933), the court discussed a solicitation scheme with elements similar to some present-day complaints:

Respondent maintained a rather aggressive organization for procuring such business. Arrangements existed in his office whereby "tips" or "leads" would come to the office from public garages, newspaper reporters and sometimes from former clients of the happening of accidents.

Upon the receipt of such information respondent would go himself or detail one of the employed attorneys to the hospital or other place to find the injured person or persons.

Early morning newspapers were read to learn of automobile accidents. Sometimes the machine or organization operating through newspaper employees disclosed the desired information before the newspaper was off the press, and the solicitor was on his way in advance of others engaged in similar solicitation for someone else; or possibly in advance of the adjuster for some insurance company. In several such instances the newspaper reporters were rewarded by the payment of \$10 to \$15.

Contracts were sometimes made with relatives of the injured persons and were at times made when an injured person was unconscious.

The court, noting that "[t]he unseemly scramble lowers the tone of the profession," issued a severe censure to Mr. Greathouse and warned that disbarment would follow if he did not mend his ways.

More recently, the Supreme Court, in *In re Charges of Unprofessional Conduct against 97-29*, (Minn. 1998), affirmed an admonition issued to an attorney for violation of Rule 7.3, MRPC. There, the attorney called a former applicant for a legal secretary job in his firm to solicit retention in a workers' compensation matter.

Earlier this year, another attorney was admonished for violating Rule 7.3.

The attorney received a call from the friend of a former client who happened to work as a receptionist at a hospital. The caller told him about a minor child who had been in an auto accident, was still in the hospital, and needed a lawyer. The attorney, without ever speaking with the child or her parents, sent an investigator to the hospital room with authorizations to be signed.

Later, the attorney "loaned" several hundred dollars to the friend of the former client and somehow never got around to collecting on the loan.

All of these practices have long been prohibited. The prohibition has survived First Amendment scrutiny and is widely understood among the bar.