

THE COURTS

Title 204—JUDICIAL SYSTEM GENERAL PROVISIONS

PART V. PROFESSIONAL ETHICS AND CONDUCT

[204 PA. CODE CH. 81]

Amendment of Rule 7.3 of the Pennsylvania Rules of Professional Conduct; No. 166 Disciplinary Rules Doc.

Order

Per Curiam

And Now, this 30th day of July, 2018, upon the recommendation of the Disciplinary Board of the Supreme Court of Pennsylvania, the proposal having been published for comment in the *Pennsylvania Bulletin*, 47 Pa.B. 5927 (September 23, 2017):

It Is Ordered pursuant to Article V, Section 10 of the Constitution of Pennsylvania that Rule 7.3 of the Rules of Professional Conduct is amended in the following form.

This *Order* shall be processed in accordance with Pa.R.J.A. No. 103(b), and shall be effective in 60 days.

Justice Donohue files a dissenting statement.

Annex A

TITLE 204. JUDICIAL SYSTEM GENERAL PROVISIONS

PART V. PROFESSIONAL ETHICS AND CONDUCT

Subpart A. PROFESSIONAL RESPONSIBILITY

CHAPTER 81. RULES OF PROFESSIONAL CONDUCT

Subchapter A. RULES OF PROFESSIONAL CONDUCT

§ 81.4. Rules of Professional Conduct.

The following are the Rules of Professional Conduct:

INFORMATION ABOUT LEGAL SERVICES

Rule 7.3. Solicitation of Clients.

* * * * *

(b) A lawyer may contact, or send a written communication to, the target of the solicitation for the purpose of obtaining professional employment unless:

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

(2) the person has made known to the lawyer a desire not to receive communications from the lawyer; [**or**]

(3) the communication involves coercion, duress, or harassment[.]; **or**

(4) the communication is a solicitation to a party who has been named as a defendant or respondent in a domestic relations action. In such cases, the lawyer shall wait until proof of service appears on the docket before communication with the named defendant or respondent.

Comment:

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(7) This Rule is not intended to prohibit a lawyer from contacting representatives of organizations or groups that may be interested in establishing a group or prepaid legal plan for their members, insureds, beneficiaries or other third-parties for the purposes informing such entities of the availability of and details concerning the plan or arrangement which the lawyer or lawyer's firm is willing to offer. This form of communication is not directed to people who are seeking legal services for themselves. Rather, it is usually addressed to an individual acting in a fiduciary capacity seeking a supplier of legal services for others who may, if they choose, become prospective clients of the lawyer. Under these circumstances, the activity which the lawyer undertakes in communicating with such representatives and the type of information transmitted to the individual are functionally similar to and serve the same purpose as advertising permitted under Rule 7.2.

(8) In this instance, the term "domestic relations action" includes the actions governed by the Family Court Rules, see Pa.R.C.P. No. 1931(a), and actions pursuant to the Protection of Victims of Sexual Violence or Intimidation Act, see 42 Pa.C.S. §§ 62A03 et seq. In such cases, a defendant/respondent party's receipt of a lawyer's solicitation prior to being served with the complaint can increase the risk of a violent confrontation between the parties. The prohibition in RPC 7.3(b)(4) against any solicitation prior to proof of service appearing on the docket is intended to reduce any such risk and allow for the plaintiff to take any appropriate steps.

Dissenting Statement Justice Donohue

I respectfully disagree with the decision of the majority of my colleagues to adopt the proposed amendment to Rule of Professional Conduct 7.3. Under both the United States and Pennsylvania Constitutions, commercial speech that is neither misleading nor related to unlawful activity may be regulated only if, inter alia, the commercial speech regulation is narrowly drawn. *Florida Bar v. Went For It, Inc.*, 515 U.S. 618, 624 (1995) (citing *Central Hudson Gas & Elec. Corp. v. Public Serv. Comm'n of N.Y.*, 447 U.S. 557, 564-65 (1980)); *Commonwealth Bureau of Prof. and Occupational Aff. v. State Bd. of Physical Therapy*, 728 A.2d 340, 343 (Pa. 1999). This Court has held that this requires commercial speech regulations to be the least restrictive means of advancing the asserted interest. *Commonwealth Bureau of Prof. and Occupational Aff.*, 728 A.2d at 343.

As proposed, the rule appears to be wildly over inclusive and will curb more speech than is necessary to effectuate the goal of the amendment. The proposed amendment does not differentiate between the vast majority of domestic relations actions and those where there exists the potential that a partner may become violent when learning of the domestic relations action. In my view, there is a less restrictive alternative available, as the Court could require that in cases where domestic violence is a concern, the plaintiff could file a motion to seal the complaint until service upon the defendant is made. It seems to me that such a rule would accomplish the laudable goal of the amendment—reducing domestic

violence—while also ensuring that it does not unconstitutionally infringe upon an attorney’s right to commercial speech.

As the proposed amendment does not pass constitutional scrutiny, I dissent.

[Pa.B. Doc. No. 18-1225. Filed for public inspection August 10, 2018, 9:00 a.m.]

Title 249—PHILADELPHIA RULES

PHILADELPHIA COUNTY

Diversified Community Services and Unity in the Community Expungement Clinic Fee Waivers; Administrative Doc. No. 05 of 2018

Order

And Now, this 24th day of July 2018, upon consideration of the application of Diversified Community Services and Unity in the Community (hereinafter, “the Applicants”) for a waiver of court costs and fees for any petitions for expungement and any petitions for limited access orders that may be filed by the pro bono attorney volunteers working with the Applicants in connection with an expungement clinic that the Applicants expect to hold for low income individuals on August 1, 2018 (hereinafter, “the Expungement Clinic”), it is hereby *Ordered* that the application is *Granted* as follows:

1. The First Judicial District of Pennsylvania shall waive the court costs and fees for any and all petitions for expungement (filed pursuant to Rules 490 or 790 of the Pennsylvania Rules of Criminal Procedure) and petitions for limited access orders (filed pursuant to Rule 790.1 of the Pennsylvania Rules of Criminal Procedure) that may be filed by the Applicants’ attorney volunteers in connection with the Expungement Clinic; provided that each such petition shall be accompanied by a praecipe, signed by an attorney volunteer, in the form substantially set forth under Rule 240 of the Pennsylvania Rules of Civil Procedure.

2. The Applicants and/or their attorney volunteers shall collect financial information from the Expungement Clinic participants regarding their respective incomes and debts. No attorney volunteer shall seek a waiver of court costs and fees under this Order for any Expungement Clinic participant whom the attorney volunteer reasonably determines, based upon the available financial information, is not otherwise eligible to proceed in forma pauperis.

3. Each petition filed under this Order shall include a designation in the caption stating: “DIVERSIFIED COMMUNITY SERVICES AND UNITY IN THE COMMUNITY EXPUNGEMENT CLINIC”.

4. Each petition filed under this Order shall be filed electronically via the Court’s Electronic Filing System.

5. Prior to filing any petitions under this Order, an attorney-representative for the Applicants shall coordinate with the Court’s Criminal Motions Unit to block off a pre-approved day (or days) in which petitions filed under this Order are to be heard by the Court. The Court’s Criminal Motions Unit shall provide the attorney-representative for the Applicants with a Scheduling Notice outlining, inter alia, what day (or days) have been pre-approved for hearing petitions filed under this Order.

6. Prior to filing any petitions under this Order, an attorney-representative for the Applicants shall confer with the Office of the District Attorney to discuss the Expungement Clinic. In connection therewith, the attorney-representative for the Applicants shall serve a copy of this Order on the Office of the District Attorney.

7. An attorney-representative for the Applicants shall provide the Court and the Office of the District Attorney with a list of all petitions filed under this Order.

By the Court

HONORABLE JACQUELINE F. ALLEN,
*Administrative Judge Trial Division
Court of Common Pleas
Philadelphia County*

[Pa.B. Doc. No. 18-1226. Filed for public inspection August 10, 2018, 9:00 a.m.]