



No-Solicitation Rules Alive, Well at Legal Seminars

If you are a speaker at a legal seminar, what you say after your presentation may be just as important as what you say during it. A recent ethics opinion from Ohio concerning the solicitation of potential clients at legal seminars¹ has drawn considerable comment, not all of it complimentary.² Some lawyers have even wondered if it might be time to reconsider ER 7.3 (Solicitation of Clients),³ the “no-solicitation” rule that has already been amended several times since it was first adopted in Arizona in 1985.

ER 7.3 is intended to prevent the potential for abuse by lawyers or their agents through the direct in-person, live telephone or real-time electronic “solicitation” of someone known to need legal services.⁴ “Solicitation” is defined as “a targeted communication initiated by the lawyer that is directed to a specific person and that offers to provide, or reasonably be understood to provide, legal services.”⁵ Think of the ambulance chaser and you will get the picture. The thought here is that there are a host of other ways of letting someone know of a lawyer’s availability and qualifications without engaging in the type of personal contact “that may overwhelm the person’s judgment.”⁶ The rule covers many forms of solicitation, but the one we are concerned with here is the solicitation of potential clients at legal seminars where the lawyer is the speaker, or one of several speakers, on a topic that the members of the audience have gathered to hear. In this regard, if the audience is composed of lawyers, such as a CLE seminar, the rule by its own terms does not apply.⁷

There are quite a few ethics opinions on what lawyers can and cannot do at legal seminars, including a 1992 Arizona opinion concerning appropriate guidelines for lawyers participating in the State Bar’s Speakers’ Bureau.⁸ These opinions generally allow lawyers speaking at seminars to distribute or make available their business cards, copies of articles they have written, and written materials, such as newsletters, usually directed to their existing clients. In Arizona and several other jurisdictions, distribution of these items, particularly business cards, must not be done personally by the lawyer or someone acting on the lawyer’s behalf.⁹ The sense here is that to allow such would constitute a potential for abuse inherent in any “direct interpersonal encounter,” a risk sought to be prevented by ER 7.3.¹⁰

What got some lawyers exercised about the Ohio opinion was that it deemed unethical, and a violation of Ohio’s version of ER 7.3, any attempt made by a lawyer to remain after a seminar to discuss with the attendees questions they may have about the subjects discussed. The opinion states that after a legal seminar a lawyer may not answer specific questions of individual attendees or meet one-on-one with attendees to discuss any personal legal needs or legal issues related to the presentation. The opinion goes on to say that the lawyer should instead advise those persons to contact the lawyer’s office to make an appointment or to seek legal advice from that person’s regular lawyer. The problem is that the solicitations prohibited by ER 7.3 are defined as targeted communications “initiated by the lawyer.” If, after the seminar, any attendee has the option of just walking out of the room, with or without taking a business card, or asking the lawyer a question, how is answering that

question a targeted communication initiated by the lawyer? This is further supported by an observation in an earlier Arizona ethics opinion¹¹ where it is stated that even an offer by the lawyer to provide a post-seminar consultation, free or paid, unaccompanied by any pressure or coercive conduct, would not constitute the kind of solicitation contemplated by ER 7.3 provided the offer is extended to the group rather than to a specific person and there is no pressure or “importuning” on the seminar participants to accept the offer.

Ohio’s views on the subject to the contrary notwithstanding, in Arizona you are safe as a seminar speaker if, after the seminar, you (1) have business cards and other materials available, but don’t personally distribute them, and (2) answer questions of a general nature from individual seminar participants after your presentation, being cautious not to leave yourself open to claims that you initiated an in-person solicitation of a seminar attendee. Remember, you can always suggest that the person take a card and call your office for a free consultation.^{AZ}

Ethics Opinions and the Rules of Professional Conduct are available at www.azbar.org/Ethics



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endnotes

1. Ohio Adv. Op. 2015-2, *Direct In-person Solicitation of Prospective Clients at Seminars* (Aug. 7, 2015).
2. Brian S. Faughnan, *Bad ethics opinion or the worst ethics opinion?—Ohio 2015 2 edition*. <http://faughnanonethics.com/?p=465>
3. Arizona Rules of Professional Conduct, Rule 42, ARIZ.R.S.Ct.
4. Cmt. [2] to ER 7.3. The Comment points out that these forms of solicitation can subject a person to the “private importuning of the trained advocate” and are considered “fraught with the possibility of undue influence, intimidation, and overreaching.”
5. Cmt. [1] to ER 7.3
6. Cmt. [3] to ER 7.3.
7. ER 7.3(a)(1).
8. Ariz. Ethics Op. 92-10 (Oct. 30, 1992); see also Arizona Ethics Ops. 87-23 (Oct. 26, 1987) and 88-07 (Sept. 13, 1988).
9. Ariz. Ethics Op. 92-10, *supra* note 8, at Section 2.
10. Ariz. Ethics Opinion 87-23, *supra* note 8.
11. *Id.*